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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1029.

JOSEPH M. FRENCH, PLAINTIFF IN ERROR,

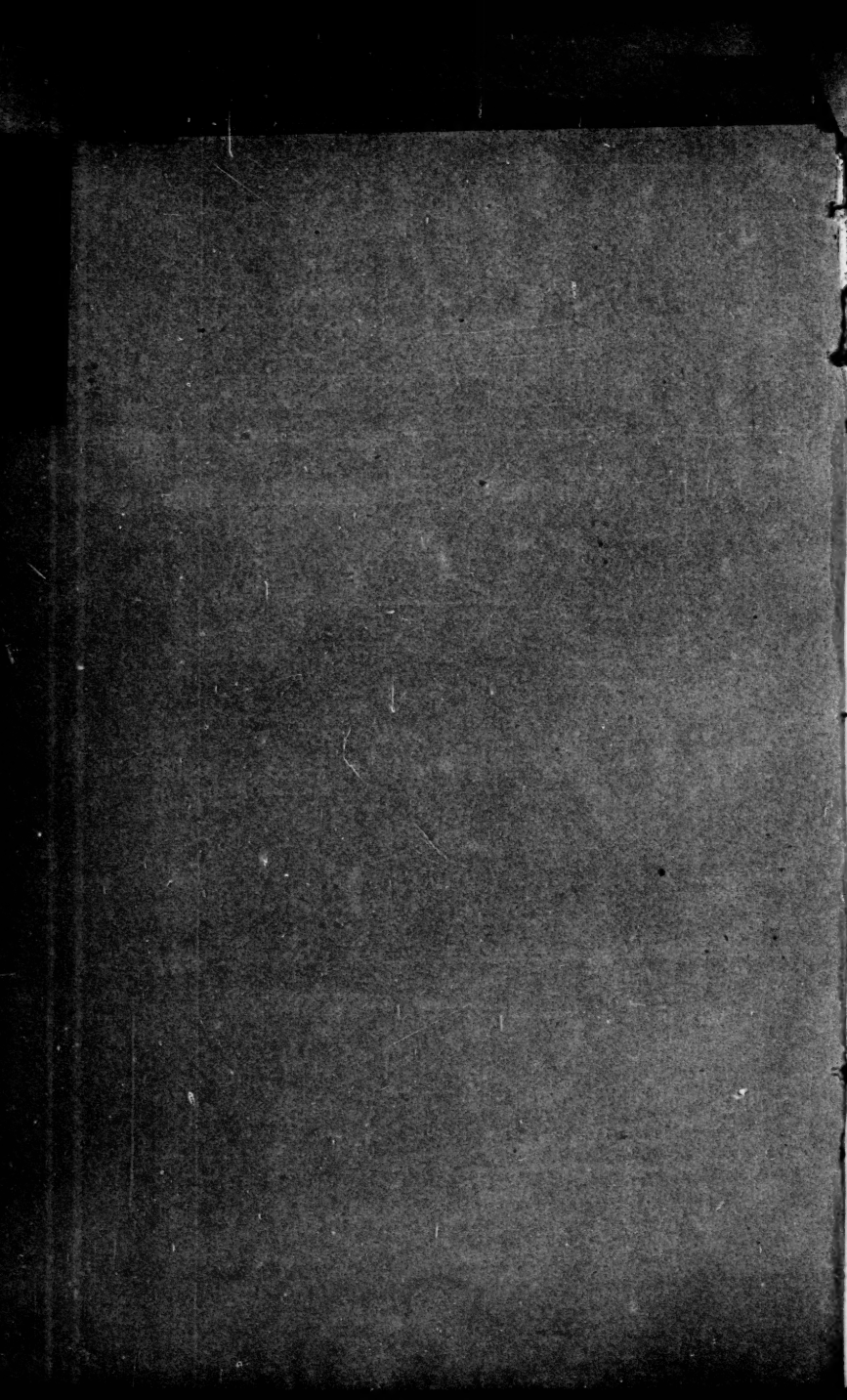
vs.

MARGARET A. WADE, WIDOW OF THE LATE HENRY F. WADE, JR., NATURAL TUTRIX OF HER MINOR CHILDREN PHILIP D. WADE ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 27, 1879.

Examine.



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Transcript from third district court, parish of Orleans.—Filed October 31st, 1878.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

MRS. MARG'T A. WADE, TUTRIX, &C., *vs.* JOSEPH M. FRENCH. } No. 8557.

MRS. MARG'T A. WADE, TUTRIX, &C., *vs.* JOSEPH M. FRENCH. } No. 25218.

Petition.—Filed 14th March, 1878.

To the honorable the third district court for the parish of Orleans:

The petition of Mrs. Margaret A. Wade, widow of the late Henry F. Wade, jr., residing in New Orleans, herein suing in her capacity
2 of natural tutrix of her five minor children, Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida A. Wade, respectfully shows:

That said minors are the issue of the marriage of your petitioner with Henry F. Wade, jr., and are his sole and only children and heirs at law.

That on or about the twentieth day of January, 1865, the said Henry F. Wade, jr., was seized and possessed in fee of a certain piece of ground, with all the buildings and improvements thereon, and the rights, ways, privileges, and advantages and appurtenances thereunto belonging or in anywise appertaining, situate in the first district in this city, in square No. 156, bounded by Bartholomew (now Clio), Magazine, Melicerte (now Erato), and Camp streets, formed by the whole of lot No. 7 and half of lot No. 8, as per plan made by Louis Bruizier, dated February 9th,
3 1837, and deposited in the office of H. B. Cenas, notary public, and measuring in American measure forty-two feet and six inches front on Bartholomew street (now Clio street) by one hundred and seventy-five feet in depth, between parallel lines, acquired by the said Henry F. Wade, jr., from his father and mother, Henry Farlar Wade and Lucretia Martin, by act of donation passed before Theodore Guyol, notary public, dated May 17th, 1860.

That on or about the 20th day of January, 1865, in virtue of the act of Congress approved on the 17th July, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," and in virtue of the joint resolution of Congress explanatory thereof, likewise approved on the 17 July, 1862, said property was seized by the marshal of the United States for the district of Louisiana, in the suit No. 7969, entitled
4 United States vs. One piece of ground, property of Henry F. Wade, jr., in which said property was libelled as forfeited to the United States for the causes therein mentioned, and that such further proceedings were had in said suit that on the 6th day of May, 1865, the said before described property was by decree of said court condemned as forfeited to the United States.

That thereafter, to wit, on the 21st October, 1865, said property was

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1 *Transcript from third district court, parish of Orleans.—Filed October 31st, 1878.*

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Circuit court of the United States, fifth circuit, and district of Louisiana.

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MRS. MARG'T A. WADE, TUTRIX, &C., *vs.* JOSEPH M. FRENCH. } No. 25218.

Petition.—Filed 14th March, 1878.

To the honorable the third district court for the parish of Orleans:

The petition of Mrs. Margaret A. Wade, widow of the late Henry F. Wade, jr., residing in New Orleans, herein suing in her capacity
2 of natural tutrix of her five minor children, Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida A. Wade, respectfully shows:

That said minors are the issue of the marriage of your petitioner with Henry F. Wade, jr., and are his sole and only children and heirs at law.

That on or about the twentieth day of January, 1865, the said Henry F. Wade, jr., was seized and possessed in fee of a certain piece of ground, with all the buildings and improvements thereon, and the rights, ways, privileges, and advantages and appurtenances thereunto belonging or in anywise appertaining, situate in the first district in this city, in square No. 156, bounded by Bartholomew (now Clio), Magazine, Melicerte (now Erato), and Camp streets, formed by the whole of lot No. 7 and half of lot No. 8, as per plan made by Louis Bruizier, dated February 9th,
3 1837, and deposited in the office of H. B. Cenas, notary public, and measuring in American measure forty-two feet and six inches front on Bartholomew street (now Clio street) by one hundred and seventy-five feet in depth, between parallel lines, acquired by the said Henry F. Wade, jr., from his father and mother, Henry Farlar Wade and Lucretia Martin, by act of donation passed before Theodore Guyol, notary public, dated May 17th, 1860.

That on or about the 20th day of January, 1865, in virtue of the act of Congress approved on the 17th July, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," and in virtue of the joint resolution of Congress explanatory thereof, likewise approved on the 17 July, 1862, said property was seized by the marshal of the United States for the district of Louisiana, in the suit No. 7969, entitled
4 United States vs. One piece of ground, property of Henry F. Wade, jr., in which said property was libelled as forfeited to the United States for the causes therein mentioned, and that such further proceedings were had in said suit that on the 6th day of May, 1865, the said before described property was by decree of said court condemned as forfeited to the United States.

That thereafter, to wit, on the 21st October, 1865, said property was

sold under and by virtue of said decree of condemnation, as the whole will more fully appear from the record and proceedings in said suit, to which special reference is made.

That by the seizure and condemnation of said property the estate of their said father therein was forfeited for and during the term of his natural life.

That he departed this life on the 24th day of February, 1874,
5 and his said children above named are the owners of said piece of ground and of the improvements thereon.

Nevertheless your petitioner shows that one Joseph French, falsely pretending to be the owner thereof, is collecting the rents and revenues of said property, and refuses to recognize the title of said minors, and to account to your petitioner, as their tutrix, for said rents and revenues from the time of their said father's death, although duly requested so to do; that the rents and revenues aforesaid amount to upwards of four thousand dollars.

Wherefore your petitioners pray that said Joseph M. French be duly cited to answer this petition, and after all due proceedings, that there be judgment decreeing the said Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida A. Wade, to be the owners of said piece of ground and improvements, and to be put in
6 possession thereof, and that there be judgment in favor of your petitioner, in her capacity of tutrix of said minors, for the rents and revenues of said property from the 24th day of February, 1874, to date, say the sum of four thousand dollars, with legal interest thereon from the date of their reception until paid, and for the rents hereafter to accrue, until the final judgment and costs of suit, and for all other general and equitable relief in the premises.

(Signed) MARGARET A. WADE.
(Signed) T. GILMORE & SONS,
For Petitioners.

Citation to Joseph M. French, of New Orleans.—Issued 14th March, 1878.

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

MARGARET A. WADE, NATURAL TUTRIX,
vs.
7 JOSEPH M. FRENCH. } No. 25218.

To Joseph M. French, of New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the third district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable F. A. Monroe, judge of said court, the fourteenth day of March, in the year of our Lord 1878.

[SEAL.] (Signed) JOE GARIDEL,
Deputy Clerk.

Return on cit.—Filed 18th March, 1878.

Received March 15th, 1878, and on March 18th, 1878, served copy of the within citation and accompanying petition on J. M. French, through Mr. Herrick, his agent, in person.

Returned same day.

8 (Signed) WM. J. GRADY,
D'y Sheriff.

Order appointing curator ad hoc.—Filed 29th March, 1878.

Third district court, parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

On motion of T. Gilmore & Sons, of counsel for plaintiff, suggesting that defendant is absent from the State, and that E. W. Herrick, upon whom the citation in this case has been served, is without authority (as he represents to defend this suit), and that said defendant has no other known agent in the State; and further suggesting that this suit concerns real estate situated within the jurisdiction of this court, and the rents and revenues thereof; it is ordered that J. O. Nixon, jr., esq., att'y-at-law, be appointed to represent said absent defendant and to defend this suit.

9 *Notice of appointment of curator ad hoc.—Issued March 30, 1878.*

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

NEW ORLEANS, *March 30th*, 1878.

To Mr. J. O. NIXON, Jr.:

SIR: Please to take notice that you have been appointed curator ad hoc, to represent the defendant J. M. French.

[SEAL.] (Signed) B. MEYERS, *Deputy Clerk.*

Return on notice of appointment of curator ad hoc.—Filed 11th April, 1878.

Received April 11th, 1878, and on the same day, month, and year served copy of within notice on J. O. Nixon, attorney, in person.

Returned same day.

10 (Signed) M. DRISCOLL, *Deputy Sheriff.*

Citation to Joseph M. French through J. O. Nixon, esq., of New Orleans, curator ad hoc.—Issued 30th March, 1878.

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

To Mr. Joseph M. French, thro' J. O. Nixon, esq., of New Orleans, curator ad hoc:

You are hereby summoned to comply with the demand contained in

the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the third district court for the parish of Orleans, in ten days after the service hereof.

11 Witness the honorable F. A. Monroe, judge of the said court, the thirtieth day of March, in the year of our Lord 1878.

[SEAL.] (Signed) JOE. GARIDEL,
Deputy Clerk.

Return on cit. to J. M. French, thro' J. O. Nixon, esq., curator ad hoc.—Filed 11th April, 1878.

Received April 11th, 1878, and on the same day, month, and year served copy of within citation and accompanying petition on Joseph M. French, through J. O. Nixon, curator ad hoc, in person.

Returned same day.

(Signed) M. DRISCOLL,
Deputy Sheriff.

Sh'ff's fee, $1.50.

Exception of curator ad hoc.—Filed 22nd April, 1878.

MARG'T A. WADE, TUTRIX,
vs.
J. M. FRENCH. } No. 25218.

And now comes J. O. Nixon, jr., appointed curator ad hoc herein,

12 and appearing only for the purpose of excepting to the proceedings herein, excepts to the proceedings herein on the grounds—

1st. That there is no proof before the court that J. M. French, defendant herein, is an absentee within the meaning of the law.

2nd. That there is no proof or allegation in plaintiff's petition that J. M. French resides out of the State of Louisiana.

3rd. That there is no allegation or proof that the defendant, J. M. French, has any property, rights, or credits within the jurisdiction of this honorable court.

4th. That the petition discloses no legal cause of action.

Wherefore, appearer prays that all further proceedings against appearer be stayed herein; and that appearer be hence dismissed with costs, and for general relief.

(Signed) J. O. NIXON, JR.,
Curator ad hoc.

13 *Order fixing exception.—Extract from minutes 22nd Ap'l,* '78.

Third district court, parish of Orleans.

MARG'T A. WADE, TUTRIX,
vs.
J. M. FRENCH. } No. 25218.

On motion of T. Gilmore & Sons, of counsel for plaintiffs, ordered that the exception herein be fixed for trial on Monday the 29th instant at 11 a. m.

Notice of trial of exception.—Issued 22nd April, 1878.

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

MARG'T A. WADE, TUTRIX, } No. 25218.
vs.
J. M. FRENCH.

NEW ORLEANS, *April 22nd*, 1878.

To J. O. Nixon, esq., curator ad hoc:

SIR: Please to take notice that the exception in the above entitled case is fixed for trial on Monday the 29th day of April, 1878, at
14 11 o'clock a. m.

[SEAL.] (Signed) GEO. H. THEARD,
Deputy Clerk.

Return on notice of trial.—Filed 22nd April, 1878.

Received April 22nd, 1878, and on the same day, month, and year served a copy of within notice on J. O. Nixon, curator ad hoc, in person. Returned same day.

(Signed) M. DRISCOLL,
D'y Sh'ff.

Continuance of exception.—Extract from the minutes 4th May, 1878.

Third dist. c't, parish of Orleans.

MARG'T A. WADE, TUTRIX, } No. 25218.
vs.
J. M. FRENCH.

The exception herein came on this day to be tried—present, T. Gilmore for pl'ff, J. O. Nixon, jr., for defendant—when, after hearing
15 pleadings and argument of counsel till the expiration of the rule hour, the court ordered that this matter be continued to the 7th instant at 11 a. m.

Rule to sequester.—Extract from the minutes 7th day of May, 1878.

3rd dist. c't, parish of Orleans.

MARG'T A. WADE, TUTRIX, } No. 25218.
vs.
J. M. FRENCH.

On motion of T. Gilmore & Sons, of counsel for plaintiff, it is ordered that defendant show cause, on Tuesday the 14th inst. at 11 o'clock a. m., why the property on Clio street, the subject-matter of this suit, should not be sequestered during the pendency thereof, and the rents and revenues of the same collected by the sheriff of this parish, to abide the result.

Return on rule to sequester.—Filed 9th May, 1878.

16 3rd dist. court, parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

Received May 8th, 1878, and on the 9th day of same month and year served copy of within rule on J. M. French, through J. O. Nixon, jr., curator ad hoc in person.

Returned same day.

(Signed) M. DRISCOLL, *Deputy Sheriff.*

Submission.—Extract from the minutes 7th day of May, 1878.

3rd dist. court, parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

The exception herein came on this day for further trial—present, T. Gilmore, for pl'ff, J. G. Nixon jr., for defendant—when, after hearing further argument of counsel, the court took time to consider.

17 *Continuance.—Extract from the minutes of 14th day of May*, 1878.

3rd dist. court, parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

The rule herein taken by plaintiff on the 7th instant came up for trial to-day—present, T. Gilmore, esq., for plaintiff; J. O. Nixon, jr., esq., for defendant—when, after hearing argument of counsel, the court ordered that this rule be continued to the 25th instant at 11 a. m.

Order maintaining exception partly.—Extract from minutes May the 17th, 1878.

3rd dist. court, parish of Orleans.

MARG'T A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 25218.

18 In the matter of the exception herein heard and submitted on the 7th day of May, 1878, for the reasons this day orally assigned by the court, it is ordered that said exception be maintained in so far as the same relates to the claim set up by plaintiff to rents and revenues, and accordingly that so much of plaintiff's demand be dismissed as in case of non-suit; and that in other respects, and in so far as the said exception relates to the claim to the title to the real estate described in plaintiff's petition, the same be overruled.

Petition for removal of cause.—Filed 22d May, 1878.

To the honorable F. A. Monroe, judge of the third district court for the parish of Orleans:

MRS. MARGARET A. WADE, TUTRIX OF HER five minor children, Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida M. Wade,
vs.
JOSEPH M. FRENCH. } No. 25218.

19 The petition of Joseph M. French, defendant in the above entitled and numbered cause, respectfully represents:

That he is a resident of the city of Detroit and a citizen of the State of Michigan; that the plaintiff, Margaret A. Wade, tutrix, &c., is a resident of the city of New Orleans and a citizen of the State of Louisiana; that the matter in dispute in the above entitled and numbered suit exceeds, exclusive of costs, the sum of six thousand dollars.

That he desires to remove said suit into the circuit court of the United States for the fifth circuit and district of Louisiana, as he is informed is his right.

Your petitioner further represents that he has never been cited to appear, except by the appointment by this honorable court of a curator ad hoc, and that your petitioner has not instructed nor authorized
20 said curator ad hoc to appear and answer for your petitioner.

Your petitioner herewith annexes a bond as by law required for suit named.

Wherefore petitioner prays that this honorable court will accept and approve said petitioner's bond, and order said cause to be removed to the United States circuit court for the fifth circuit and district of Louisiana, and for all orders required in the premises.

(Signed) J. LIVINGSTON,
Atty. for Petitioner.

Bond for removal of cause.—Filed 22nd May, 1878.

3rd dist. court for the parish of Orleans.

MRS. MARG'T A. WADE, TUTRIX, &C.,
vs.
JOS. M. FRENCH. } No. 25218.

Know all men by these presents that I, Joseph M. French, a citizen of the State of Michigan, as principal, and E. W. Herrick, a resi-
21 dent of the city of New Orleans, as surety, are held and firmly bound unto Margaret A. Wade, tutrix of her minor children, in the sum of five hundred dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators. Thus done at the city of New Orleans this day of May, 1878.

Now, the condition of this obligation is such, that whereas the said Joseph M. French has this day petitioned to the honorable the third district court for the parish of Orleans for the removal to the circuit court of the United States for the fifth circuit and district of Louisiana the certain suit in which he is defendant and Margaret A. Wade, tutrix, is plaintiff, and being the certain suit entitled Mrs. Margaret A. Wade,

tutrix, vs. Joseph M. French, and numbered 25218 of the docket of the third district court for the parish of Orleans:

Now, then, if the said bounden Joseph M. French shall enter
22 and file in said circuit court of the United States for the fifth circuit and district of Louisiana a copy of the record in said suit, and shall pay all costs that may be awarded by said circuit court, or said circuit court shall hold that said suit was wrongfully or improperly removed thereunto, then the said bond is to be null and void; otherwise to remain in full force and virtue.

(Signed) JOSEPH M. FRENCH,
By his att'y J. LIVINGSTON.
(Signed) E. W. HERRICK.

Attest:
(Signed) JOE GARIDEL,
Deputy Clerk.

E. W. Herrick, being duly sworn, says that he is worth over and above his debts five hundred dollars.
(Signed) E. W. HERRICK.

Sworn to and subscribed before me.
New Orleans, May 22nd, 1878.
(Signed) JOE GARIDEL,
Deputy Clerk.

23 *Order for removal of cause to U. S. circuit court.*

Considering the within petition and the bond thereunto tendered, it is ordered as herein prayed for, that this case be removed and transferred to the circuit court of the United States for the fifth circuit and district of Louisiana.

New Orleans, May 23rd, 1878.
(Signed) F. A. MONROE, *Judge.*

Certificate of clerk.

STATE OF LOUISIANA:

Third district court, parish of Orleans.

I, Ben Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing twenty-five pages do contain a true and correct transcript of all the proceedings had and of all the documents filed in the suit entitled Mrs. Margaret A. Wade,
24 tutrix, &c., vs. Joseph M. French, No. 25218 of the docket of said court.

New Orleans, October 12th, 1878.
[SEAL.] (Signed) BEN. ARMBRUSTER, *Clerk.*

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT.

Supplemental petition.—Filed November 4th, 1878.

MRS. MARGARET A. WADE, NATURAL TUTRIX,
vs.
J. M. FRENCH.

To the hon'ble the circuit court of the United States for the district of Louisiana:

The supplemental petition of Mrs. Margaret A. Wade, natural tutrix

of her five minor children, Philip D., Henry F., Hampton M., Courtney, and Ida A. Wade, respectfully represents that the defendant, Joseph M. French, falsely pretending to be the owner of the parcel of land and improvements described in the original petition, has since the death
25 of the said Henry F. Wade, jr., the father of said minors, on 24th February 1874, collected the rents and revenues of said property, amounting to the sum of nine hundred dollars per annum, for which he is liable and indebted to your petitioner in her aforesaid capacity of natural tutrix.

Wherefore your petitioner prays leave to file this supplemental petition, that said Joseph M. French may be duly cited to answer the same, and that after all due proceedings there be judgment in their favor for the said parcel of land and improvements, that they be put in possession thereof, and that there be likewise judgment in fav of your petitioner against said defendant for the rents and revenues thereof from the 24 day of February, 1874, to wit, the sum of four thousand two hundred and seventy-five dollars, with interest and cost of suit.

And for general relief.

(Signed) T. GILMORE & SONS,
Att'ys.

26 *Order.*

Let this supplemental petition be filed.
Dec. 9th, 1878.
(Signed) EDWARD C. BILLINGS,
Judge.

Citation.

UNITED STATES OF AMERICA,
District of Louisiana:

Circuit court of the United States, fifth circuit, district of Louisiana.

MRS. MARGARET A. WADE, TUTRIX, &C., *vs.* J. M. FRENCH. } No. 8557.

To Joseph M. French:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof,
27 which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 9th day of December, A. D. one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the 103rd year.

Test.
[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received December 10th, 1878, by the U. S. marshal, and on the 14th day of December, 1878, served true copies of the within citation with accompanying supplemental petition on J. M. French, within named defendant, through his attorney, J. Livingston, esq., by handing the same to him, the said J. Livingston, in person, in the city of New Orleans,
28 the said defendant J. M. French being absent from the district.
(Signed) W. G. ELLIOTT,
D'y Marshal.

Answer.—Filed December 11th, 1878.

Circuit court United States.

MRS. MARGARET A. WADE, TUTRIX, *vs.* JOSEPH M. FRENCH. } No. 8557.

Now, into court comes Joseph M. French, by his attorney, and for answer to plaintiff's petition pleads the general issue.

And for further answer respondent says that he is the lawful owner of the premises described in plaintiff's petition, by virtue of an authentic act of sale passed before S. Magner, notary public, on the 30th of October, 1865; he purchased from Henry F. Wade, jr., & his wife Margaret A. Wade, said premises for the sum of six thousand dollars, &
29 that said Mrs. Margaret A. Wade, after all the requisites & formalities of law were complied with, renounced all rights she had or might have on said property, ratified said sale, & dispossessed herself of all rights & liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise. And the said Mrs. Margaret A. Wade further bound herself & her heirs to respondent & his heirs & assigns that she & they shall & will at all times acknowledge the validity of said sale and of the renunciation she now makes of all rights which she has or may have in & to the property so sold & conveyed, & that neither she nor they shall seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, & customs of which she might avail herself; all of which will more fully & clearly appear from the authentic act of sale.

Your respondent further represents that, relying upon the validity of said sale & upon the good faith of the vendors, he commenced at once to repair the premises & to erect a large two-story brick carriage-house & stable separate & apart from the buildings that there were on the lot, & a paved roadway from said brick carriage-house to the street, at an expense & cost of eight thousand dollars; that said brick carriage-house & stable are now on said premises, & can be removed without injury to the buildings that were & are now on the premises at the date of sale. And your respondent further represents that said brick carriage-house & stable are the most valuable part of said premises, & that without them the premises would not bring in any revenue.

Your respondent further avers that the flagging of the yard, the erection of an iron fence, the putting in five grates, painting, cost upwards of two thousand dollars, the vouchers for which, as well as for the erection of the brick carriage-house & stable, will be produced on the trial of this case.

Respondent further represents that Henry F. Wade, jr., died

27th of February, 1874; that his succession was opened in the second district court of the parish of Orleans, No. 36967 of the docket; that Mrs. Margaret A. Wade was appointed & qualified as tutrix; that she caused an inventory to be made, & that the property now claimed in this suit was not inventoried as the property of the deceased or of the minors; that all that the inventory embraced was personal property valued at five hundred dollars; that at the opening of said succession of Henry F. Wade, the plaintiff did not pretend to claim, neither did her attorneys pretend to claim, that the movers had any interest in & to the property & rights to be recovered in this suit; that it was only in March last that plaintiff brought suit to recover this property, & respondent avers & believes that the suit is a speculative one, without either law or equity in its favor.

Respondent further avers that he has paid State & city taxes upon said property for the years 1875, 1876, 1877, & 1878, amounting the sum of eight hundred & fifty-two dollars, as will appear from the
32 tax receipts to be produced on the trial of this cause.

Respondent now avers that by the laws of this State in the court, that the final judgment in this case is in favor of the plaintiff for the recovery of the premises in question, he is entitled to a judgment in his favor for the value of the improvements put on said premises, to wit, the sum of eight thousand dollars for the erection of the brick carriage-house & stable, or the right to remove the same, & also for reimbursement for the repairs on the buildings to the amount of two thousand dollars, & also to be refunded the sum of eight hundred & fifty-two dollars, city & State taxes, paid as set forth above.

And respondent, for further answer, says that he paid said Henry F. Wade, jr., & his wife the sum of six thousand , as per act of sale; that said sum was received & expended by said Wade & wife for the benefit of themselves & their children; that said sum was the full value of the property sold, & more than said property will now
33 bring.

And your respondent avers that it would be inequitable for the plaintiff to receive & keep the full value of the premises, & seek to recover the premises without a return of the price paid, and that equity will not permit the vendor to keep the price received & and the thing sold.

And respondent further avers that the vendors, & especially the plaintiff in this suit, are bound in law & equity, by all the solemn stipulations in favor of respondent set forth in the act of sale.

Wherefore respondent prays for judgment in his favor, with all costs of suit; and respondent further prays that should judgment be rendered in favor of the plaintiff for the property so sold, that then there be rendered judgment in his favor and against the plaintiff for the sum of six thousand dollars, the price paid for the property & received by the plaintiff, and for judgment in the further sum of eight thousand
34 dollars, the cost paid for the erection of the brick carriage-house & stable, or the right to remove the same; and for further judgment for the sum of two thousand dollars, the amount expended in repairs on the house & premises, such as painting, grates, flagging & iron fence; and also further judgment for the sum of eight hundred & fifty-two dollars, city & State taxes paid for the years 1875, 1876, 1877, & 1878, & all costs of suit; & respondent prays for all such & other relief & remedy as equity & law will permit, &c.

(Signed) J. LIVINGSTON,
Att'y for Defendant.

Marshal's return.

Received December 10th, 1878, by the U. S. marshal, and on the 14th day of December, 1878, served true copies of the within citation with accompanying supplemental petition on J. M. French, within named defendant, through his attorney, J. Livingston, esq., by handing the same to him, the said J. Livingston, in person, in the city of New Orleans,
28 the said defendant J. M. French being absent from the district.
(Signed) W. G. ELLIOTT,
D'y Marshal.

Answer.—Filed December 11th, 1878.

Circuit court United States.

MRS. MARGARET A. WADE, TUTRIX, *vs.* JOSEPH M. FRENCH. } No. 8557.

Now, into court comes Joseph M. French, by his attorney, and for answer to plaintiff's petition pleads the general issue.

And for further answer respondent says that he is the lawful owner of the premises described in plaintiff's petition, by virtue of an authentic act of sale passed before S. Magner, notary public, on the 30th of October, 1865; he purchased from Henry F. Wade, jr., & his wife Margaret A. Wade, said premises for the sum of six thousand dollars, &
29 that said Mrs. Margaret A. Wade, after all the requisites & formalities of law were complied with, renounced all rights she had or might have on said property, ratified said sale, & dispossessed herself of all rights & liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise. And the said Mrs. Margaret A. Wade further bound herself & her heirs to respondent & his heirs & assigns that she & they shall & will at all times acknowledge the validity of said sale and of the renunciation she now makes of all rights which she has or may have in & to the property so sold & conveyed, & that neither she nor they shall seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, & customs of which she might avail herself; all of which will more fully & clearly appear from the authentic act of sale.

Your respondent further represents that, relying upon the validity of said sale & upon the good faith of the vendors, he commenced at once to repair the premises & to erect a large two-story brick carriage-house & stable separate & apart from the buildings that there were on the lot, & a paved roadway from said brick carriage-house to the street, at an expense & cost of eight thousand dollars; that said brick carriage-house & stable are now on said premises, & can be removed without injury to the buildings that were & are now on the premises at the date of sale. And your respondent further represents that said brick carriage-house & stable are the most valuable part of said premises, & that without them the premises would not bring in any revenue.

Your respondent further avers that the flagging of the yard, the erection of an iron fence, the putting in five grates, painting, cost upwards of two thousand dollars, the vouchers for which, as well as for the erection of the brick carriage-house & stable, will be produced on the trial of this case.

Respondent further represents that Henry F. Wade, jr., died

31 27th of February, 1874; that his succession was opened in the second district court of the parish of Orleans, No. 36967 of the docket; that Mrs. Margaret A. Wade was appointed & qualified as tutrix; that she caused an inventory to be made, & that the property now claimed in this suit was not inventoried as the property of the deceased or of the minors; that all that the inventory embraced was personal property valued at five hundred dollars; that at the opening of said succession of Henry F. Wade, the plaintiff did not pretend to claim, neither did her attorneys pretend to claim, that the movers had any interest in & to the property & rights to be recovered in this suit; that it was only in March last that plaintiff brought suit to recover this property, & respondent avers & believes that the suit is a speculative one, without either law or equity in its favor.

Respondent further avers that he has paid State & city taxes upon said property for the years 1875, 1876, 1877, & 1878, amounting the sum of eight hundred & fifty-two dollars, as will appear from the
32 tax receipts to be produced on the trial of this cause.

Respondent now avers that by the laws of this State in the court, that the final judgment in this case is in favor of the plaintiff for the recovery of the premises in question, he is entitled to a judgment in his favor for the value of the improvements put on said premises, to wit, the sum of eight thousand dollars for the erection of the brick carriage-house & stable, or the right to remove the same, & also for reimbursement for the repairs on the buildings to the amount of two thousand dollars, & also to be refunded the sum of eight hundred & fifty-two dollars, city & State taxes, paid as set forth above.

And respondent, for further answer, says that he paid said Henry F. Wade, jr., & his wife the sum of six thousand , as per act of sale; that said sum was received & expended by said Wade & wife for the benefit of themselves & their children; that said sum was the full value of the property sold, & more than said property will now
33 bring.

And your respondent avers that it would be inequitable for the plaintiff to receive & keep the full value of the premises, & seek to recover the premises without a return of the price paid, and that equity will not permit the vendor to keep the price received & and the thing sold.

And respondent further avers that the vendors, & especially the plaintiff in this suit, are bound in law & equity, by all the solemn stipulations in favor of respondent set forth in the act of sale.

Wherefore respondent prays for judgment in his favor, with all costs of suit; and respondent further prays that should judgment be rendered in favor of the plaintiff for the property so sold, that then there be rendered judgment in his favor and against the plaintiff for the sum of six thousand dollars, the price paid for the property & received by the plaintiff, and for judgment in the further sum of eight thousand
34 dollars, the cost paid for the erection of the brick carriage-house & stable, or the right to remove the same; and for further judgment for the sum of two thousand dollars, the amount expended in repairs on the house & premises, such as painting, grates, flagging & iron fence; and also further judgment for the sum of eight hundred & fifty-two dollars, city & State taxes paid for the years 1875, 1876, 1877, & 1878, & all costs of suit; & respondent prays for all such & other relief & remedy as equity & law will permit, &c.

(Signed) J. LIVINGSTON,
Att'y for Defendant.

Supplemental answer.—Filed December 18th, 1878.

Circuit court U. S.

MRS. MARGARET A. WADE, TUTRIX, *vs.* JOSEPH M. FRENCH. } No. 8557.

Respondent, for supplemental answer, now comes into court & says that he has paid insurance upon the buildings upon the premises
35 for the years 1874, 1875, 1876, 1877, & 1878, amounting to the sum of two hundred & sixty-seven dollars & seventy-seven cents, which sum so expended respondent prays for judgment, in the event that judgment be rendered in favor of the plaintiff for the premises now involved in this suit, & for all such further sums which may be paid for insurance & taxes until the final determination of the suit, & as in duty, &c.

(Signed) J. LIVINGSTON,
Att'y for Def't.

Let the supplemental answer be filed.
December 18th, 1878.
(Signed) EDWARD C. BILLINGS,
Judge.

Exception to the supplemental petition. Filed December 23rd, 1878.

Circuit court U. S.

MRS. MARGARET A. WADE, TUTRIX, *vs.* JOSEPH M. FRENCH. } No. 8557.

And now comes into court the defendant herein, J. M. French, by his attorney, and, for exception to the supplemental petition, says
36 that this court has no jurisdiction over the matters set up in said supplemental petition, for this, to wit, that defendant was brought into the third district court for the parish of Orleans through the appointment of a curator ad hoc; that said curator ad hoc filed an exception to the jurisdiction of said district court on the 22nd April, 1878; that there was judgment rendered on said exception on the 17th of May, 1878, dismissing plaintiff's suit, so far as relates to her claim set up to the rents & revenues, & maintaining jurisdiction as to the claim for the premises as set forth in the original petition. Defendant avers that said judgment is final & conclusive, & cannot be a matter for consideration by this hon. court.

Defendant further says that this cause was removed from the third district court to the circuit court U. S. on the 22nd May, 1878, & that the only cause removed was the suit for the recovery of the premises; that the cause was removed in the position it was in, before the
37 third district court, at the date of the removal, all of which will more clearly appear from the record.

Wherefore, defendant excepts to the filing of the supplemental petition herein and pleads as an exception in bar the judgment rendered as set forth.

(Signed) J. LIVINGSTON,
Att'y for Defendant.

Submission of exception.—Extract from the minutes, November term, 1878.

NEW ORLEANS, *Tuesday, January 7th*, 1879.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

MRS. M. A. WADE, TUTRIX, *vs.* JOSEPH M. FRENCH. } No. 8557.

In this case J. Livingston, esq., counsel for defendant, this day appeared and made his argument on the exception, and the court took time to consider.

38 *Waiver of jury & agreement.—Filed April 9th*, 1879.

WADE *vs.* FRENCH. } No. 8557.

It is agreed that a trial by jury in this cause be waived; that the question of title set up by the plaintiff to the property described in the petition be first submitted to the court and be decided, reserving all other questions to be passed upon hereafter.

(Signed) T. GILMORE & SONS,
For Plaintiff.

(Signed) J. LIVINGSTON,
Att'y for Def't.

Admission & note of evidence.—Filed April 9th, 1879.

WADE *vs.* FRENCH. } No. 8557.

It is admitted that Dr. Wade died at the time stated in the petition.
Pl'ff offered act of donation, marked A. Also record & proceedings suit 7969 U. S. dist. court La., including libel, decree, sale, marshal's return on vend. exponas.
Def't offered ad B.

39 *Act of donation, marked A, referred to in foregoing note of evidence.*

UNITED STATES OF AMERICA,
State of Louisiana:

Be it known that on this seventeenth day of the month of May, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fourth, before me, Theodore Guyol, a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Henry Farlow Wade, of this city, who declared that for and in consideration of his love and affection for his son, Henry F. Wade, junior, also of this city, he does, by these presents, make unto him a donation, pure, simple, and irrevocable, of a certain portion of ground, with the

buildings and improvements thereon, rights, privileges, customs, servitudes, ways, and appurtenances thereunto belonging, situate in
40 the Faubourg Saulet, first district of this city, in the square bounded by Bartholomew, Magazine, Melicerte or Erato, and Camp streets, and measuring forty-two feet six inches front, on Bartholomew street, by one hundred and seventy-five feet ten inches in depth, between parallel lines, and is formed of the whole of lot No. seven and one-half of lot No. eight, on a plan drawn by Louis Bringier, surveyor, on the 9th February, 1837, and deposited in the office of H. B. Cenas, late a notary public in this city, the whole valued by disinterested persons, whose report is annexed to an act passed this day in this office, at the sum of seven thousand dollars.

The said property belongs to the community existing between the said donor and Mrs. Lucretia Martin, his wife, having been purchased by her from John M. Bach by an act passed before William Christy, late a notary public in this city, on the twenty-seventh day of September, eighteen hundred and thirty-nine, to have and to hold the
41 said property unto the said donee, his heirs and assigns, forever.

And the said donor binds himself and his heirs to warrant and forever defend the said property against all legal claims and demands whatsoever.

And he more cedes and transfers unto the said donee all the rights and actions of warranty to which he himself is or may be entitled, against all the former owners of the said property, subrogating the said donee to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said donor.

This donation is accepted by the said Henry F. Wade, junior, here present and acknowledging due delivery and possession of the said property.

According to the receipts exhibited to me, said notary, there are no taxes due on the said property, and the said donee dispenses with the production of a certificate from the recorder of mortgages for
42 this parish to show the mortgages, if any, on the said property, and to be annexed to this act as required by article 3328 of the civil code of this State.

And now to these presents personally came and appeared Madam Lucretia Martin, of lawful age, wife of the said Henry Farlow Wade, who, after having taking cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she doth approve and ratify the same; and further, that it is her wish and intention to release in favor of the said donee the property herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Wherefore I, the said notary, did inform the said Mrs. Wade, apart and out of the presence and hearing of her said husband, that
43 she had, by law, a legal mortgage on the property of her said husband—first, for the restitution of her dowry and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted

with her said husband; and fifthly, for the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband. That in making her intended renunciation, she would deprive herself irrevocably and forever of all rights and reclamation against the property herein described, whether under mortgage or otherwise.

And the said Mrs. Wade did thereupon declare unto me, no-
44 tary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature or kind whatever to which she is, or may be, entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Henry Farlow Wade, being now present, aiding and authorizing the said Mrs. Wade in the execution of these presents, she, the said Mrs. Wade, did again declare that she did, and does hereby, make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said donee, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

45 Done and passed at New Orleans, in my office, the day, month, and year aforesaid, in the presence of William G. Latham and Paul Abat, witnesses, who have signed with the appearers and me, notary, after reading the whole.

(Original signed) L. WADE.
H. F. WADE.
HENRY F. WADE, JR.

P. ABAT.
W. G. LATHAM.

THEO. GUYOL,
Not. Pub.

A true copy from the original.
[SEAL.] (Signed) THEO. GUYOL.

Record and proceedings in suit No. 7969, U. S. district court for the district of Louisiana, offered in evidence by plaintiff on 9th April, 1879.

UNITED STATES
vs.
ONE PIECE OF GROUND, PROPERTY OF HENRY F. Wade, jr. } 7969.

Libel of information.—Filed January 20th, 1865.

46 To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana.

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, against the "estate, property, money, stocks, credits, and effects" hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1st. That Benjamin F. Flanders, supervising special agent of the Treasury Department, by virtue of the act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand and eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the fifteenth day of May, in the year one thousand eight hundred and sixty-three, seized, as forfeited to the United States, at New Orleans, within said district and within the jurisdiction of this court, a certain piece of ground, with all the buildings and improvements thereon, situate in the first district, in square No. 156, bounded by Bartholomew (now Clio), Magazine, Melicert (now Erato), and Camp streets, formed by the whole of lot No. 7 & half of lot No. 8, as per plan made by Louis Bringier, surveyor, dated February 9th, 1837, and deposited in the office of H. B. Cenas, notary public, and measuring in American measure 42 feet 6 inches front on Bartholomew (now Clio st.), by 175 feet in depth between parallel lines, acquired by the said Henry F. Wade, jr., from his father and mother, Henry Farlow Wade and Lucretia Martin, by act of donation passed before Theodore Guyol, notary public, dated May 17th, 1860.

2nd. That Henry F. Wade, jr., is and was on the 17th day of July, 1862, and previously thereto had been, the owner of the above described property.

3d. That certain States, forming a part of the territory and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued, and bearing date the first day of July, A. D. eighteen hundred and sixty-two, are now engaged and were at the time said proclamation was issued engaged, and have since continued to be engaged in armed rebellion against the lawful authority of the United States.

4th. That by the act of Congress of the United States, approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

5th. That the said Henry F. Wade, jr., subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as an officer of the army of the rebels in arms against the Government of the United States, and that, while owning property in a loyal State or Territory of the United States, or the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

6th. That the said Henry F. Wade, jr., subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did hold an office in the so-called Confederate States of America after having held an office of trust or profit in the United States; and did hold an office or agency under the government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to, or to support the constitution of the so-called Confederate States.

7th. That the said Henry F. Wade, jr., subsequently to the said

seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made by the President of the United States, on the twenty-fifth day of July, in the year one thousand eight
51 hundred and sixty-two, cease to aid, countenance and abet such rebellion, and return to his allegiance to the United States.

8th. That the said Henry F. Wade, jr., subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made, on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

9th. That by reason of the premises, the property herein described, and all the right, title, interest, and estate of the said Henry F. Wade, jr., herein, became and was forfeited to the United States, and
52 ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such futher and other relief as to law and justice may appertain, and as this court is competent to give in the premises, and that, after due proceedings had, the same be condemned to the use of the United States. And he prays for further relief.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Order of publication annexed to libel.

53 United States district court, eastern district of Louisiana.

UNITED STATES
vs.
ONE PIECE OF GROUND, PROPERTY OF HENRY F. Wade, jr. } No. 7969.

Whereas certain property, fully described in the libel filed by the dist. att'y, and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in anywise appertaining, and all the right, title, and interest of Henry F. Wade, jr., therein has been seized by the marshal of the United States for the eastern district of Louisiana by virtue of an act of Congress approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other pur-

54 poses." And whereas the United States attorney for the eastern district of Louisiana did on the 20th day of January, A. D. 1865, file a libel of information in this court praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this 20th Jan'y, in the year of our Lord eighteen hundred sixty-five, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 17th day of February, 1865, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein of
55 the said Henry F. Wade, jr., should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the True Delta newspaper twice a week previous to said 17th day of February, A. D. 1865, the first publication to be on or before 25th inst.

N. O., January 20th, 1865.

(Signed) E. H. DURELL,
Judge.

Admiralty warrant.—Issued January 20th, 1865.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the one piece of ground fully described in the libel filed by the dist. att'y, & now of record in this court, together with all the buildings and improvements thereon, rights, ways, privileges, &
56 other hereditaments thereunto belonging, and all the right, title, & interest of Henry F. Wade, jr., therein now libelled by the United States of America for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having, or pretending to have, any right, title or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant that you make return according to law.

57 Witness the honorable Edward H. Durell, judge of the said court at New Orleans, this 20th day of January, 1865, and the 89th year of the Independence of the United States.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

Marshal's return.

Received, Jan'y 20th, 1865, and in obedience to within warrant seized and took into my possession the within described property, posted copies of this warrant, the libel and order of the judge, on the door of the court-house, and published monition in the True Delta, a daily news-

paper printed & published in New Orleans, on the 24, 31 Jan'y, & 4 & 11th Feb'y, 1865.

(Signed) A. BOISBLANC,
D'y. U. S. M'l.

Ret'd 14th Feb'y, 1865.

Monition annexed to warrant.

UNITED STATES
vs.
ONE PIECE OF GROUND, PROPERTY OF HENRY F. Wade, jr. } No. 7969.

In the United States district court, eastern district of Louisiana.

58 In obedience to a warrant issued in this court, to me directed, in the above-entitled suit, I have seized and taken into my possession a certain piece of ground situate in the first district, on square No. 156, bounded by Bartholomew (now Clio) and Camp streets, formed by the whole of lot No. 7 and half of lot No. 8, as per plan made by Louis Bringier, surveyor, dated February 19th, 1837, and deposited in the office of N. B. Cenas, notary public, and measuring in American measure 42 feet 6 inches front on Bartholomew (now Clio) street, by 175 feet in depth, between parallel lines, acquired by the said Henry F. Wade, jr., from his father and mother, Henry Tailor Wade and Lucretia Martin, by act of donation passed before Theodore Guyol, notary public, dated May 17th, 1860, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in anywise appertaining, and all the right, title
59 and interest of the said Henry F. Wade, jr., therein, now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit now pending in the said district court.

And I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said property should not be condemned and forfeited to the United States, agreeably to the prayer of the libel.

United States Marshal's office, New Orleans, 21st day of January, 1865.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Ja. 24, 31; Feb. 4, 11.

Default.—Extract from the minutes, February term, 1865.

WEDNESDAY, *March 1st*, 1865.

Present, Hon. E. H. Durell, judge.

60 UNITED STATES
vs.
ONE PIECE OF GROUND, PROPERTY OF HENRY F. Wade, jr. } No. 7969.

The delay allowed by law having expired herein, & no claim or de-

fence being filed after due monition & proclamation, on motion of the district attorney, it is ordered that all persons interested in the property seized be pronounced in contumacy, & defendant & the libels adjudicated & taken pro confesso.

Testimony for libellant.—Filed March 13th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
THE PROPERTY OF H. F. WADE, JR. } No. 7969.

Testimony taken in presence of district attorney before me, Cha's Claiborne, U. S. com'r, this 13th March, 1865.

BENJAMIN DEAN, being duly sworn for libellant, deposes and says:

61 I knew Henry F. Wade, jr. I knew him in this city as a practicing physician before the rebellion broke out; his office was at the corner of Magazine and Josephine sts. I do not know when he left this city. I knew him in the confederacy. I met him on my way home at Camp Moore, in August, 1862. I saw him again last year, 1864, at Plaquemine, La. I was present at the time when a number of boats were burned there. I was an engineer on the st'r Belfast. These boats were burned by the Arizonian battallion, a battallion of soldiers in rebellion against the government of the United States. Henry F. Wade, jr., was present, and was dressed in the rebel uniform—that usually worn by the surgeons or doctors in the confederate service. Plaquemine was then held by the U. S. forces, and this large body of confederate forces coming in from the country, surprised them, and took possession of the place. I do not know where Wade is now.

(Signed) BENJAMIN DEAN.

62 Sworn to & subscribed before me, this 13th March, 1865.

(Signed) CHAS. CLAIBORNE,
U. S. Commissioner.

Testimony for libellant.—Filed May 6th, 1865.

UNITED STATES
vs.
ONE PIECE OF GROUND, PROPERTY OF H. F. Wade, jr. } No. 7969.

CLARENCE PITCHER, sworn for U. S., says:

I knew Henry F. Wade, jr. He was a practising physician at corner Magazine & Josephine streets before the war broke out. Have seen him in the confederacy in the month of July, 1863. Saw him with a body of confederate troops back of Plaquemine. I was at Plaquemine at that time when several boats were burned by a bat'allion in the rebel service, called Arizona Bat'allion. This batallion came into Plaquemine suddenly, & overpowered the Federal troops there; they burned several steamboats, & the one on which I was captain; this boat was
63 called the Belfast. H. F. Wade, jr., was among the number of

these rebels, & dressed in the uniform of a rebel surgeon. He was on horseback with the officers of the Arizona Battallion. This battallion was in armed rebellion against the Government of the U. States. All this occurred in 1863.

After they had gone through with the burning of the boats, they came down to Lafourche. This batallion arrested me, & sent me up to their headquarters on Bayou Grosse Tete, & from there through their lines to Baton Rouge.

They took all the provisions we had on the Belfast; they took everything that they did not destroy.

I knew Henry F. Wade, jr., very well, having been at school with him. I knew him for several years before the war.

(Signed) CLARENCE PITCHER.

Sworn to & subscribed before me, this 6th day of May, 1865.

(Signed) CHAS. CLAIBORNE,
U. S. Comm'r.

Note of evidence.—Filed May 6th, 1865.

64 U. S.
vs.
PROPERTY OF HENRY F. WADE, JR. } No. 7969.

Dist. att'y offered in evidence the monition, warrant, marshal's return & the testimony of Benj. Dean & Clarence Pitcher, taken before U. S. comm'r, & on file in this case.

Decree of condemnation.—Extract from the minutes, February term, 1865.

SATURDAY, *May 6th*, 1865.

Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
1 PIECE OF GROUND, PROPERTY OF HENRY F. WADE, JR. } No. 7969.

The monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons duly entered, & the law, & the evidence considered, it is, on motion of the dist. att'y, ordered, sentenced & decreed by the court now here,
65 & his honor the district judge, by virtue of the power & authority in him vested, doth hereby order, sentence and decree that the piece of ground with all the buildings & improvements thereon, the property of Henry F. Wade, jr., and fully described in the libel on file be, & the same is hereby, condemned as forfeited to the United States.

Cl't is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 25th day of June, 1865, & that upon the return thereof the proceeds be distributed according to law.

Venditioni exponas.—Issued May 11th, 1865.

United States district court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas at a district court of the United States, holden at New

66 Orleans for and within said district, on the sixth day of May, A. D. 1865, one piece of ground with all the buildings and improvements thereon, fully described in the libel on file, the property of Henry F. Wade, jr., were, after proclamation and due proceedings had, decreed forfeit and ordered to be sold at public auction: These are, therefore to command you to sell to the highest bidder, at public auction, at the city of New Orleans, within said district, on the 20th day of June, 1865, at 12 o'clock m., the said one piece of ground, &c., first giving thirty days' notice, at least, of the time and place of sale, by advertising the same in the "Picayune," one of the newspapers printed at New Orleans, and by proclamation in the usual form, on the day of sale; the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs.

And make due return hereof with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans,
67 this 11th day of May, A. D. 1865, and 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
Dy Clerk.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

NEW ORLEANS, *Oct. 25th*, 1865.

Pursuant to this precept I have caused the property within named to be offered for sale by public auction, and to the highest bidder, at the Merchants & Auctioneers' Exchange, on the day, hour and place therein directed, having given thirty days' previous notice of the time, place and manner of the sale in the "Picayune," one of the newspapers printed in the city of New Orleans, and by the crier, on the day of sale; but there not having been two-thirds value, according to appraisement, offered for said property, the same was withdrawn and again advertised in the Picayune, one of the newspapers printed in New Orleans, for ten days, as per order of court to that effect; said sale to take place at the same place & hour, on the 21st day of October, 1865, and
68 in said last advertisement the terms and conditions of said sale were fully set forth, as well as by the crier at the day of sale.

But previous to the first and last named advertisements, the proceedings of the U. S. marshal were stayed by proceedings in court, which caused a delay in the execution of this writ; when the court affirmed its decission and ordered the property to be sold as per the advertisement, and at such sale the purchaser was Henry F. Wade, jr., who purchased the said property for the sum of two thousand and fifty dollars, payable one-half in cash, & his note payable in one year from date of sale for one-half, viz:

Cash	$1,025 00
Note at one year for	1,025 00
Total amount of sale	$2,050 00

Whereby the gross sales, amounting to two thousand and fifty dollars cents, which I pay over to C. Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

69 Attest:
(Signed) A. BAUDOIEN,
D'y Marshal.

Received from Cuthbert Bullitt, esq., United States marshal, two thousand and fifty dollars cents, being (as he saith) the proceeds of the aforegoing sale; the monies to be disposed of as the court directs, and for which I have signed duplicate receipts.

New Orleans, October 25th, 1865.

(Signed) K. LOEW,
D'y Clerk.

Reference is also made to the certificate from the recorder of mortgages hereto annexed.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records in this office there is no other mortgage standing in the name of Henry F. Wade, junior, and recorded against the property described in the printed slip hereto annexed, than B. P. 1 f. 370, the privilege in favor of the second drainage district.

New Orleans, October twenty-third, 1865.

[SEAL.] (Signed) CHAS. E. LENES,
D'y Rec'r.

70 *Answer; plea of pardon, &c.—Filed June 19th, 1865.*

In the United States dist. court, eastern dist. of La.

UNITED STATES
v.
ONE PIECE OF GROUND, THE PROPERTY OF Henry F. Wade, jr. } No. 7969.

And now before this hon. court comes Henry F. Wade, jr., in proper person, and claiming as his own the property herein proceeded against in confiscation by the United States, and by decree of this hon. court, under date of the 6th May, condemned & confiscated to the use of the United States, says that he is the sole owner thereof, bona fide, and no other person or persons has or have any right, title, or interest in or to the same, and in bar to said libel of information & to further proceedings under said decree of condemnation, he specially pleads:

1st. That this respondent is desirous of taking advantage of the privileges and benefits conferred by the proclamation of the
71 President of the United States, bearing date at the city of Washington, on the 29th May, 1865.

2nd. That this respondent is not now, nor has he at any time been a civil or diplomatic officer or otherwise domestic or foreign agent of the pretended Confederate Government; that he has never left a judicial station under the United States to aid said rebellion; that he has never been a military or naval officer of said Confederate Government above the rank of colonel in the Army or lieutenant in the Navy; that he has never filled or left a seat in the Congress of the U. S. to aid said rebellion; that he never was in, or resigned or tendered a resignation of any commission in the Army or Navy of the United States, to evade the duty of resisting said rebellion; that he has never been engaged in any way in treating, otherwise than lawfully, as prisoners of war, persons found in the United States service, as officers, soldiers, seamen, or in other capacities; that he has never been an absentee

72 from the U. S. for the purpose of aiding said rebellion; that he was not educated by the Government in the Military Academy of West Point, or at the U. S. Naval Academy; that he has never held or pretended to hold the office of governor of any State in insurrection against the United States; that he has never left his home within the jurisdiction of the United States, and passed beyond the Federal military lines into the so-called Confederate States for the purpose of aiding the rebellion; that he has never been engaged in the destruction of the commerce of the U. S. upon the high seas, and has never made a raid or been engaged in making a raid into the U. S. from Canada, or been engaged in destroying the commerce of the U. S. upon the lakes or rivers that separate the British Provinces from the United States; that he is not now, nor was he at the time of taking the said oath
73 prescribed by said amnesty proclamation, either in military, naval, or civil confinement or custody, or under bonds of military or naval authorities or agents of the U. S. as a prisoner of war, or detained for offence of any kind, either befor' conviction or after; that the full estimate & real value of his property is under twenty thousand dollars; that he has never taken the oath prescribed by the President's proclamation of Dec. 8, 1863, or the oath of allegiance of the United States since the date of said proclamation, and therefore could not have violated the same.

3rd. That this respondent on the 15th June, 1865, before Charles Claiborne, clerk of the U. S. circuit court, 6th jud. circuit & east'n dist. of La., in the city of New Orleans, an officer duly authorized to administer said oath, took and subscribed the oath known as the amnesty oath, prescribed in form and substance under the President's proclamation of 29th May, 1865.

4th. That said oath has been duly registered, and he herewith
74 presents a duly certified copy of the same, and that since said date he has kept and maintained the same inviolate.

Wherefore this appearer, by reason of said proclamation and the pardon and amnesty therein proclaimed, promised and guaranteed, respectfully prays, that the libel of information herein, and all proceedings had thereon, and the decree of confiscation & condemnation herein rendered, may be set aside & dismissed, and that appearer be fully restored to the possession of the property seized & condemned herein, and re-established in all his rights, & said plea of pardon be admitted; and he prays for general relief, and he will ever pray, &c., &c.

(Signed) C. ROSELIUS, *Proctor.*
do. HENRY F. WADE, JR.

Sworn to and subscribed before me this 19th June, 1865.

(Signed) K. LOEW,
D'y Clk.

Amnesty oath referred to in foregoing answer.

75 United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

I, H. F. Wade, jr., do solemnly swear that I do not come within the classes of persons excepted from the benefits of the President's proclamation of May 29th, 1865: so help me God.

(Signed) H. F. WADE, JR.

Sworn to and subscribed before me this 15th day of June, A. D. 1865.

(Signed) CHAS. CLAIBORNE,
Clerk.

Petition to suspend sale.—Filed June 19th, 1865.

In the United States district court, east'n dist. of La.

UNITED STATES
vs.
ONE PIECE OF GROUND, THE PROPERTY OF Henry F. Wade, jr. } No. 7969.

To the hon. E. H. Durell, judge of the U. S. dist. court, eastern dist. of La.:

The petition of Henry F. Wade, jr., residing in the city of New Orleans, respectfully represents, that the property herein proceeded against in confiscation, and condemned by judgment of this hon. court rendered on the 6th May, 1865, is advertised for sale by the U. S. marshal
76 for Tuesday the 20th inst.; that your petitioner since said decree was rendered has renewed his allegiance to the United States, has taken the oath prescribed by the President's amnesty proclamation of the 29th May, 1865, and has intervened herein, claiming the privilege & benefit of the amnesty therein proclaimed, and asking to be reinstated into all his rights, and to have said property restored to him; that under these circumstances, and until this hon. court can investigate his right to the relief and pardon asked for, it is proper that no proceedings should take place that might render inoperative the relief & benefits prayed for by this petitioner; and that if said sale is permitted to proceed, the same will operate disastrously to the claims & rights of your petitioner.

Wherefore your petitioner respectfully prays that it may please your honor to order a suspension of said sale, as aforesaid, until the
77 claims & intervention, &c., of your petitioner can be investigated and passed upon; and he prays for general relief.

And he will ever pray, &c., &c.

(Signed) C. ROSELIUS,
Proctor.

Order.

Let the sale of the property libelled herein be suspended until further order.

June 19th, 1865.

(Signed) E. H. DURELL,
Judge.

Hearing & submission.—Extract from the minutes, May term, 1865.

THURSDAY, *July 13th*, 1865.

The court met at 11 a. m. Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
1 PIECE OF GROUND, PROPERTY OF H. F. Wade, jr. } No. 7969.

This cause came up on defendant's plea of pardon, dist. att'y for libellants, C. Roselius for defendant, and, after hearing counsel, the court took time to consider.

78 *Order, plea of pardon rejected.—Extract from the minutes, May term, 1865.*

SATURDAY, *July 15th*, 1865.

Court met at 11 a. m. Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
1 PIECE OF GROUND, PROPERTY OF H. F. Wade, jr. } No. 7969.

For the reasons orally assigned by the court, it is ordered, adjudged, & decreed that the defendant's plea of pardon be rejected, and that the decree of condemnation remain undisturbed.

Petition for remission.—Filed July 19th, 1865.

To His Excellency Andrew Johnson, President of the United States:

The petition of Henry F. Wade, jr., a loyal citizen of the United States, residing in the city of New Orleans, State of Louisiana, respectfully represents that under "An act to suppress insurrection & punish treason & rebellion, to seize & confiscate the property of rebels, & for other purposes," proceedings in confiscation were instituted
79 Jan. 20th, 1865, in the U. S. dist. court, east'n dist. of La., against the property of your petitioner, consisting of a certain piece of ground, situated in the 1st dist. of New Orleans, in square No. 156, bounded by Bartholomew (now Clio st.) Magazine, Melicert (now Erato st.) & Camp streets, measuring 42 feet 6 inches front on Bartholomew (now Clio) street, by 175 feet deep between parallel lines, and on the 6th May, 1865, a decree of condemnation was entered against the same for the use of the United States.

The said property constituted the homestead of your petitioner and is the only property of which he is possessed; that he is a young man, with the pressing cares of a growing family upon him; and that, though temporarily led away from his fealty and duty to his country by the madness and local excitements of the time, he has since repented of his conduct and appreciates the deep error committed; that he has cheerfully taken the oath prescribed by your excellency under the
80 proclamation of 29th May, 1865, a copy of which is enclosed, and is only too happy to return to duty and the kind protection of his country.

That said proceedings having been entered and said decree rendered before the issuance of the proclamation of the 29th May, 1865, the same under said proclamation itself are not disturbed or interfered with thereby, but your petitioner, invoking the pardoning power that resides in your excellency, is desirous of having said forfeiture remitted and his said property restored to him.

Wherefore he respectfully prays that your excellency may be pleased to order that said forfeiture may be remitted & said property be restored to your petitioner, upon his paying the cost of said proceedings. And he will ever pray, etc., etc.

(Signed) H. F. WADE, JR.

Sworn to and subscribed before me this 18th July, 1865.

[SEAL.] (Signed) K. LOEW,
D'y Clk.

81 *Summary enquiry, order, &c.—Extract from the minutes, May term, 1865.*

WEDNESDAY, *July 19th*, 1865.

Court met at 11 a. m. Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
1 LOT OF GROUND, PROPERTY OF H. F. WADE, JR. } No. 7969.

On application for remission, C. Roselius, esq., proctor for the defendant, in the presence of the U. S. att'y and in open court, this day submitted the defendant's petition for a remission of the forfeiture pronounced herein. And the court, after a summary enquiry into the circumstances of the case, directed that a copy of said petition and of this order be transmitted to the President of the United States, for his action & decision thereon, and that in the mean time the execution of the decree of condemnation be stayed.

82 *Order revoking order of 19th July, partially.—Extract from the minutes, May term, 1865.*

WEDNESDAY, *August 2nd*, 1865.

The court met at 11 a. m. Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
1 LOT OF GROUND, PROPERTY OF H. F. WADE, JR. } No. 7969.

Ordered that the decree herein entered on 19th ultimo, so far as it stays the proceedings under the judgment of condemnation, be cancelled and annulled.

Decree of distribution.—Extract from the minutes, November term, 1866.

WEDNESDAY, *November 21st*, 1866.

The court met at 11 a. m. Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
ONE PIECE OF GROUND, PROPERTY OF H. F. Wade, jr. } No. 7969.

83 The U. S. marshal having returned into court the writ of venditioni exponas showing that—

The libelled property was sold for		$2,050 00
It is ordered, adjudged and decreed that after deducting the costs taxed, say	$518 90	
& the following taxes due on said property, to wit:		
U. S. direct tax	14 30	
State tax 1862	18 50	
" " " 63	18 50	
" " " 64	18 50	

City tax & com. 1862	63	
" " " " 63	63	
Costs State court	11 50	
Drainage	21 50	
		747 70
The balance due of		$1,302 30

be paid into the Treasury of the United States as provided by law.

PROCEEDINGS IN U. S. CIRCUIT COURT.

Document B.—Offered by def't, April 9th, 1879.

30TH OCTOBER, 1865.

STATE OF LOUISIANA,
City of New Orleans:

H. F. Wade, jr., to J. M. French. Sale.

84 Be it known that this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Henry F. Wade, jr., of this city, a loyal citizen, who declared that for the consideration hereinafter set forth, he does by these presents grant, bargain, and sell with all legal warranties and with subrogation to all his rights and actions in warranty against all preceeding vendors or possessors unto Joseph M. French of this city, here present, acknowledging possession and accepting for himself, his heirs and assigns, a certain piece of ground, situate in the first district of this city, in square No. one hundred and fifty-six, bounded by Bartholomew (now Clio), Magazine, Melicerte (now Erato) and Camp streets, formed by the whole of lot number seven and half of lot No. eight, as per plan
85 made by Louis Bringier, surveyor, on the 19th of February, 1857, deposited in the office of the late H. B. Cenas, formerly a notary public in the city, and measuring, American measure, forty-two feet six inches front on Bartholomew street (now Clio street), by one hundred and seventy-five feet in depth, between parallel lines, together with the buildings and improvements thereon, and all the rights, ways, servitudes, privileges and advantages thereto belonging.

Said property was acquired by said vendor at a sale made by the marshal of the United States for the eastern district of Louisiana, by virtue of a writ of venditioni exponas to him directed by the district court of the United States for the district aforesaid, in the suit entitled The United States versus One piece of ground, &c., the property of Henry F. Wade, junior, No. 7969 of the docket of said court, as per deed of said marshal, dated the 24th October, 1865, recorded in the clerk's
86 office of said court in sales book B, folio 340 & 341, hereto annexed as part hereof; said property belonged to said Wade, jr., defendant in said suit, and present vendor, for having acquired the same by donation from his father, Henry F. Wade, and his mother, Lucretia Martin, by act passed before Theodore Guyole, late notary, on the 17th of May, 1860, and the same belonged to said donor & his wife, as community property, for having been purchased by her from John M. Bach, by act before William Christy, notary, on the twenty-seventh of September, 1839:

To have and to hold the said property unto the said purchaser, his heirs and assigns forever.

The said vendor declared that he is neither tutor nor curator of any minors, interdicted persons or absentees.

This sale is made for and in consideration of the price and sum of six thousand dollars, which said vendor hereby acknowledges to have received in manner following, to wit, three thousand dollars in ready
87 money, for which he grants acquittance, and the balance in the two several promissory notes, drawn by said purchaser to his own order and by him endorsed, dated this day, one for nineteen hundred and seventy five dollors, payable in six months, and one for one thousand and twenty-five dollars, payable on the twenty-first of October, eighteen hundred and sixty-six, at the Canal Bank in this city, with eventual interest thereon at the rate of eight per cent. per annum from maturity till paid, as a penal clause, which notes have been paraphed ne varietur by me, notary, to identify the same herewith.

And to secure the payment of said notes in capital and all eventual interest as aforesaid, special mortgage in favor of said vendor and in that of the future holder or holders of said notes is hereby retained on the presently sold property, the said purchaser hereby binding him-
88 self & his heirs not to alienate nor encumber the same to the prejudice of this act.

Said vendor declared that said marshal who sold said property has in his hands the funds or proceeds of the sale made by him of said property to him, said Wade, jr., and is to pay the taxes due on said property as soon as said district court shall be in session, and order the same to be done, according to an order spread on the minutes of said court, bearing date the eighteenth of March, 1865, of which a certified extract is hereto annexed, the payment of which taxes he, said Wade, jr., however, guarantees by these presents, and he, said purchaser, hereby binds himself to pay all damages to which the undersigned notary may be put for passing this act without the production of the tax receipts required by law.

By reference to the annexed certificate of the recorder of mort-
89 gages in and for this parish, it appears that said property now stands incumbered in the name of said vendor: 1st. By the draining privilege, of which said purchaser assumes the payment of the balance to become due thereon. 2nd. By the mortgage he granted in and by his afore-recited act of purchase to secure payment of a certain promissory note drawn by said Wade, jr., to the order of Charles Claiborne, clerk of said United States district court, dated 21st of October, 1865, for one thousand and twenty-five dollars, payable one year after date.

And now the said present vendor has deposited with me, notary, in order to guarantee him, said French, against said mortgage and the taxes and drainage due on said property, the above-described promissory note of one thousand and twenty-five dollars, granted by him, said French, and payable the 21st October, 1866, to be kept by said notary until the said Wade, jr., shall have paid his said mortgage note,
90 shall have caused the mortgage standing against him to be cancelled, and until he shall have produced the requisite tax receipts for the years 1861, 1862, 1863, & 1864, direct tax receipt, Freedman tax receipt, and drainage receipts; and it is furthermore understood and agreed by said parties, that on his, said Wade, jr., complying with said conditions, said note of one thousand and twenty-five dollars, granted presently by him, said French, payable the twenty-first of October, 1866, although then payable, shall be due and collectable, but in no wise before six months from the date hereof.

And it is furthermore agreed that in case he, said vendor, should not

pay said note granted by him in part payment of his purchase at said marshal's sale when due, then the said French shall have the right to pay & take up said note, and on the production by him to me,
91 notary, of said note duly paid and acquitted, he shall be entitled to receive from the undersigned notary the notes signed by him and put in deposit with said notary as above set forth; and the undersigned notary shall be authorized to cancel said note as fully paid; and it is furthermore agreed that should he, said present vendor, fail to pay his said note, then the note of said French, now deposited, shall not bear any interest after its maturity.

The U. S. internal revenue stamps of six dollars on this act are hereto attached.

And thereupon, personally came and appeared and intervened to this act Mistress Margaret Ann Murray, of the full age of majority, wife of said vendor, who, being herein duly authorized and assisted by her said husband, took cognizance of the foregoing act of conveyance, which I, notary, carefully read and explained to her, and having
92 so done, she declared that it was her intention not only to ratify said sale, but to make renunciation of all rights she has, by mortgage or otherwise, on the property therein conveyed, upon which I, notary, declared to her separately and apart from her said husband, and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all of the property of her said husband, and upon that of the community, in case she should renounce thereto: First, for the restitution of her dower, and the reinvestment of dotal property bought by her in marriage; second, for the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise; third, for indemnity against all debts contracted, or which she may hereafter contract, with her said hus-
93 band; fo'rth, for such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had or may have the administration or enjoyment, or of which he may otherwise have benefited; fifth, for nuptial presents made to her by her said husband or others; that in making her intended renunciation, she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage, privilege, or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said sale and to dispossess herself of all rights and liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise; and the said husband, being now again present before me and authorizing his said wife,
94 she again declared that she does hereby formally renounce henceforth and forever all and singular her said rights, and transfer the same to the said purchaser, his heirs and assigns, to be had and held by him and them and by them enjoyed in law and thereout; and she hereby binds herself and her heirs to the said purchaser, his heirs and assigns, that she and they shall and will at all times acknowledge the validity of the present sale and of the renunciation she now makes of all rights which she has or may have in and to the property so sold and conveyed, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges and customs of which she might avail herself, or which are in her favor in the premises.

95 Done and passed at New Orleans the thirtieth day of October, eighteen hundred and sixty-five, in the presence of Edward G.

Gottschalk and James Fahey, witnesses residing in this city, who have signed their names with the said appearers and me, notary, after reading thereof.

(Original signed) HENRY F. WADE, JR.
J. M. FRENCH.
MARGARET A. WADE.
S. MAGNER, *Not. Pub.*

E. G. GOTTSCHALK.
JAS. FAHEY.

I, the undersigned custodian of notarial records for the parish of Orleans, State of Louisiana, hereby certify the foregoing to be a true copy of an original act passed before S. Magner, notary public, deceased, on the 30th of October, 1865, which act is now in my possession as custodian aforesaid.

New Orleans, February 21st, 1878.

[SEAL.] (Signed) J. H. COFFEY,
Custodian of Not'l Records.

Submission of case.—Extract from the minutes, November term, 1878.

96 NEW ORLEANS, *Wednesday, April 9th,* 1879.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

MRS. M. A. WADE
vs. } No. 8557.
JOS. M. FRENCH.

This cause came on for trial by the court, the parties having waived the jury in writing—T. Gilmore & Sons for plaintiff, J. Livingston for defendant—and after hearing the pleadings, evidence, and argument, the court took time to consider.

Findings & decree.—Entered & filed May 3rd, 1879.

Circuit court.

MRS. MARGARET A. WADE, NAT. TUTRIX,
vs. } No. 8557.
J. M. FRENCH.

The trial by jury in this cause having been waived, and the cause having been tried on the question of title, as appears by the agreement of record, the court finds the following facts:

97 That Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida A. Wade are the legitimate children of Henry F. Wade, deceased, and his sole and only heirs at law, and that Margaret A. Wade, their mother, is their duly qualified and appointed tutrix or guardian.

That on the 20th day of January, 1865, the said Henry F. Wade, jr., the decedent, was seized and possessed in fee of a certain piece of ground, with all the buildings and improvements thereon, and all the rights, ways, privileges, advantages, and appurtenances thereunto belonging or in any wise appertaining, situate in the first district of this city, in square No. 156, bounded by Bartholomew (now Clio), Magazine, Meli-

certe (now Erato), and Camp streets, formed by the whole of lot No. 7 and half of lot No. 8, as per plan made by Louis Bringier, dated February 9th, 1837, and deposited in the office of H. B. Cenas, notary public, and measuring in American measure forty-two feet and six inches front on Bartholomew street (now Clio street) by one hundred and seventy-five feet in depth between parallel lines, acquired by the said Henry
98 F. Wade, jr., from his father, Henry Farlow Wade by act of donation passed before Thodore Guyol, notary public, dated May 17th, 1860.

That on the 20th day of January, 1865, in virtue of an act of Congress, approved on the 17th July, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," and in virtue of the joint resolution of Congress explanatory thereof, likewise approved on the 17 July, 1862, said property was seized by the marshal of the United States for the district of Louisiana, under process issuing from the district of Louisiana in the suit No. 7969, entitled United States vs. One piece of ground, property of Henry F. Wade, jr., in which said property was libelled as forfeited to the United States for the causes therein mentioned (which libel is made part hereof and transcribed on page 45 of this transcript), and that such further proceedings were had in said suit that on
99 the 6th day of May, 1865, the said before described property was by decree of said court condemned as forfeited to the United States.

4th. That on the 21st day of October, 1865, said property was sold under and by virtue of said decree of condemnation and was purchased by the deceased Henry F. Wade, who, on the 30th of October, 1865, by act before J. F. Coffey, notary public, sold the same to the defendant, J. M. French.

5th. That Henry F. Wade, the defendant in the confiscation proceeding, the purchase of the property under the decree therein rendered, and the vendor of the defendant, departed this life in the city of New Orleans on the 24th of February, 1874.

And as a conclusion of law from these facts and considering the act of Congress and the joint resolution aforesaid and the decision of the Supreme Court in Bigelow vs. French (9 Wall, 163), Wallach vs. Van Riswick (2 Otto., 202), Pike vs. Wassell (4 Otto., 711), it is consid-
100 ered that there be judgment decreeing the said minors, Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida A. Wade, represented by their mother and natural tutrix of guardian, Mrs. Margaret A. Wade, be and they are hereby decreed to be the true and lawful owners of the property described in the petition herein. A certain piece of ground with all the buildings and improvements thereon and all the rights, ways, privileges, advantages and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, in square No. 156, bounded by Bartholomew (now Clio), Magazine, Melicerte (now Erato), and Camp streets, formed by the whole of lot No. 7 and half of lot No. 8, as per plan made by Louis Bringier, dated February 9th, 1837, and deposited in the office of H. B. Cenas, notary public, and measuring, in American measure, forty-two feet and six inches front on Bartholomew street (now
101 Clio street) by one hundred and seventy-five feet in depth between parallel lines, and that they recover possession of the same with costs.

May 3, 1879.

(Signed) EDWARD C. BILLINGS,
Judge.

Rule for new trial.—Entered & filed May 8th, 1879.

Circuit court U. S.

MRS. MARGARET A. WADE, TUTRIX,
vs.
JOSEPH M. FRENCH. } No. 8557.

On motion of J. Livingston, att'y for defendant, Joseph M. French, it is ordered by the court that plaintiff show cause, on the 21st May, 1879, why a new trial in this cause should not be granted on the grounds following, to wit:

That the court erred in decreeing that the plaintiff, as tutrix, in behalf of the minors, should recover possession of the property involved & be put in possession of the same, on the authorities cited in the decree, as all those authorities are not applicable to this case, as Wade, himself, was the purchaser.

102 That the court erred in decreeing possession, as Wade & his wife, in a full & perfect title, with all warranties of a good, perfect & just title, sold, for full consideration, the said property to defendant, that by law & in equity Wade & wife were bound by their warranties, & if recovery is had this obligation of warranty descends to their heirs, & that said heirs are, in law & in equity, obliged to return the purchase price before possession can be decreed to them, & that in this respect the judgment is erroneous.

That the defendant being in good faith, & Wade & wife in bad faith, the defendant, in law & equity, is entitled to recover the costs of improvements, before written, & that said judgment is erroneous in this respect.

Wherefore for these & other legal questions involved in this suit respectfully asks for a new trial or rehearing.

103 *Marshal's return.*

Received May 9th, 1879, by the U. S. marshal, and on same day I served a true copy of the within rule on T. Gilmore & Sons by leaving the same at their office with R. C. Gilmore, in city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Plea of pardon of defendant.—Filed May 9th, 1879.

Circuit court of U. S.

MRS. MARGARET WADE
vs.
J. M. FRENCH. } No. 8557.

The defendant, for further answer in bar to this suit, pleads the pardon and amnesty filed in the confiscation proceedings, No. 7969, of the U. S. D. court, on the 19th July, 1865, & for further answer prays to be hence dismissed with costs.

(Signed) J. LIVINGSTON,
Att'y for Def't.

104 *Peremptory exception.—Filed June 3rd*, 1879.

Circuit court United States.

MRS. MARGARET A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 8557.

Defendant now pleads the peremptory exception, founded in law, of amnesty & pardon extended & granted to Henry F. Wade, jr., from whom defendant purchased, with full warranty, the property involved in this litigation, as appears from public proclamation of the President of the United States of the dates of the 29th May, 1865, of the 7th Sept., 1867, & of the 25th Dec., 1868, as a complete defence & bar to the present action, & prays for judgment in his behalf with all costs of suit.

(Signed) J. LIVINGSTON,
Att'y for Def't.

C. P. 345, 346.

105 *Order new trial refused.—Extract from the minutes.—April term*, 1879.

NEW ORLEANS, *Tuesday, June 3rd*, 1879.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, dist. judge.

MRS. MARGARET WADE, TUTRIX, *vs.* JOSEPH M. FRENCH. } No. 8557.

The rule for a new trial and the cause on merits were this day resumed, and after hearing further argument it is ordered by the court that a new trial be refused; that as to rents and revenues the cause be continued till the next term; that F. A. Woolfley, esq., be appointed receiver to take charge of the property and collect the rents and pay taxes and insurance, and that said receiver be dispensed from giving bond.

Defendant's bill of exceptions.—Filed June 9th, 1879.

Circuit court of the United States.

106 MRS. MARGARET A. WADE, TUTRIX, *vs.* J. M. FRENCH. } No. 8557.

Be it remembered that on the trial of the above cause, defendant excepted to the rulings of the court, first, on the ground that the pleas of pardon & amnesty did restore to said Henry F. Wade, jr., all his right, title, & interest & control in & to the property confiscated; that as said Wade did not depart this life until Feb., 1874, he had the free, the full & complete ownership of the real estate involved by virtue of the proclamations of Sept. 7th, 1867, & 25th Dec., 1868; that his warranty deed to said French of Oct., 1865, transferred to said French said property as fully & completely as if said property had not been confiscated & sold; and, second, because said Wade, jr., being the purchaser at
107 the sale of the marshal of said property so condemned, purchased

in his own life estate, & that by said purchase the life estate was not secured from the fee, & that he was in all respects in law as if said property had never been confiscated & sold; and, third, because the judgment putting said plaintiff in possession is erroneous, before the questions of the return of purchase price, improvements, & questions of good & bad faith were acted upon & decided. But the court overruled the grounds thus taken by the defendant's counsel and gave judgment for the plaintiff, to which overruling & judgment the defendant excepted & tenders this his bill of exceptions, which is allowed accordingly.

(Signed) EDWARD C. BILLINGS,
Judge.

Further finding of court.—Entered & filed June 9th, 1879.

MRS. MARGARET A. WADE, TUTRIX,
vs.
JOSEPH M. FRENCH. } No. 8557.

108 And upon the motion for a new trial, tried upon the grounds set forth in the motion, the defendant filed a peremptory exception founded on law, to wit, the plea of pardon and amnesty, to wit, the proclamations of the President of the United States, granting pardon & amnesty, of the dates of May 29th, 1865, 7th of Sept., 1867, & 25th Dec., 1868, & the oath of said defendant, filed with the clerk of the court, of the date of June 15th, 1865, & the plea of pardon & amnesty & affidavit filed June 19th, 1865; & the court, with the consent of counsel, considered the motion for a new trial granted, & the plea of pardon & amnesty was argued & discussed upon the merits, and the court considering that said Wade was embraced in one of the exceptions of the proclamation of 29th May, 1865, & considering that the property was forfeited & condemnation was rendered before the date of the proc-
109 lamation of Sept. 7th, 1867, & 25th Dec., 1868, rendered judgment for plaintiff.

(Signed) EDWARD C. BILLINGS,
Judge.

Motion & order for writ of error.—Entered & filed June 9th, 1879.

Circuit court U. States.

MRS. MARGARET A. WADE, TUTRIX,
vs.
J. M. FRENCH. } No. 8557.

On motion of J. Livingston, att'y for defendant, & upon suggesting that there is error to the prejudice of said defendant in the final judgment rendered herein, it is ordered that upon giving bond & solvent security in the sum of five hundred dollars, that a writ of error be granted to operate as writ of supersed'as, returnable to the Supreme Court of the United States on the 2nd Monday of October, 1879.

Directions as to transcript.—Filed Sept. 11th, 1879.

110 WADE
vs.
FRENCH. } No. 8557.

The clerk in making up the record in this case will copy all the papers

& proceedings in the case of the U. S. vs. Wade, & all the papers & proceedings in the case of Mrs. Wade vs. French.

Sept. 11, 1879.

(Signed) J. LIVINGSTON,
Att'y for Def't.

Bond for writ of error.—Filed June 9th, 1879.

Know all men by these presents, that we, J. M. French, as principal, and E. W. Herrick, as surety, are held and firmly bound unto Mrs. Margaret A. Wade, tutrix of her minor children, in the full and just sum of five hundred dollars, to be paid to the said Mrs. Margaret A. Wade, tutrix, or certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these
111 presents. Sealed with our seals, and dated this ninth day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Mrs. Margaret A. Wade, tutrix, was plaintiff, and Joseph M. French, judgment was rendered against the said Joseph M. French, defendant; and the said Joseph M. French having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mrs. Margaret A. Wade, tutrix, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of October next:

112 Now, the condition of the above obligation is such if the said Joseph M. French shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) J. M. FRENCH,
Per J. LIVINGSTON, *Att'y.* [SEAL.]

(Signed) E. W. HERRICK. [SEAL.]

Sealed and delivered in the presence of—
(Signed) J. LIVINGSTON.

Bond approved June 16th, 1879.
(Signed) EDWARD C. BILLINGS,
Judge.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared Edward William Herrick, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) E. W. HERRICK.

113 Subscribed and sworn before me this 9th day of June, 1879.
(Signed) F. B. VINOT,
Commissioner U. S. Circuit Court, District of Louisiana.

114 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 113 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Mrs. Margaret A. Wade, tutrix, &c., vs. Joseph M. French, No. 8557, of the docket of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 25th day of September, A. D. 1879, thirteen words erased, approved.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 25th day of September, A. D. 1879.

EDWARD C. BILLINGS.

115 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Margaret A. Wade, widow of the late Henry F. Wade, junior, natural tutrix of her minor children, and Joseph M. French, a manifest error hath happened to the great damage of the said Joseph M. French, as by his complaint appears. We being willing that error if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 8557. Joseph M. French, plaintiff in error, versus Margaret A. Wade, tutrix, defendant in error. Writ of error. Filed June 9th, 1879. F. B. Vinot, d'y cl'k.

116 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Margaret A. Wade, widow of the late Henry F Wade, junior, natural tutrix of her minor children, Philip D. Wade, Henry F. Wade, Hampton M. Wade, Courtney Wade, and Ida A. Wade, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Joseph M. French is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Joseph M. French as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

EDWARD C. BILLINGS, *Judge.*

(Indorsed:) United States circuit court. No. 8557. Joseph M. French, plaintiff in error, vs. Margaret A. Wade, w'd'w & natural tutrix, defendant in error. Citation.

Marshal's return.

Received June 12, 1879, by the U. S. marshal, and on June 14th, 1879, I served a true copy of the within citation of error on Margaret A. Wade, widow of Henry F. Wade, junior, and natural tutrix of the within named minor children, defendant in error, by handing the same to her in person in the city of New Orleans & district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal District of Louisiana.

On the 23d day of June, 1879, personally appeared before me E. S. Curry, a deputy United States marshal for the district of Louisiana, and makes oath that he served a copy of the within citation in error on Margaret A. Wade, widow, &c., the person therein named, as stated in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal District of Louisiana.

Sworn to and subscribed before me this 23d day of June, 1879.

F. B. VINOT,
U S. Com'r.

(Indorsement on cover:) No. 1029. Joseph M. French, plaintiff in error, vs. Margaret A. Wade, widow of the late Henry F. Wade, junior, natural tutrix of her minor children, Philip D. Wade et al. Louisiana C. C. U. S. Filed 27th October, 1879.

Brief of Plff in Error

SUPREME COURT UNITED STATES.

No. 1029.

JOSEPH M. FRENCH, PLAINTIFF IN ERROR,

vs.

MRS. MARGARET A. WADE, TUTRIX, DEFENDANT IN ERROR.

Error to the Circuit Court of the District of Louisiana.

L. Graham, Brief Printer, 127 Gravier street.

SUPREME COURT UNITED STATES.

No. 1029.

OSEPH M. FRENCH, PLAINTIFF IN ERROR,

vs.

MRS. MARGARET A. WADE, TUTRIX, DEFENDANT IN ERROR.

Error to the Circuit Court of the District of Louisiana.

PLEADINGS.

This suit was commenced in the Third District Court of the Parish of Orleans, and transferred by the plaintiff in error to the Circuit Court.

The petition, filed 14th of March, 1878, of defendant in error, avers, in substance, that Henry F. Wade, Jr., was the owner of the property described—that on, or about, the 20th of January, 1865, in virtue of the act of Congress of the 17th of June, 1862, entitled, an act to suppress insurrection, etc., and of the joint resolution of the same date, the said property was siezed, etc., and on the 6th of May, 1865, condemned and forfeited to the United States, and on the 21st of October, 1865, was sold by the marshal, and that by virtue of said condemnation and sale, said Wade, Jr., was divested of the estate of said property during his natural life—that he died February 24, 1874, and that the defendant in error is his widow and natural tutrix of the minor children—that one Joseph M. French, plaintiff in error, was in possession and pretended to be the owner. Rents and revenues to the alleged amount of $4,000 were claimed from the 24th of February, 1874, the date of the death of Wade, Jr. See pages 1 to 2 of record.

The plaintiff in error, for answer, pleads the general issue, and then says that he is the lawful owner of the premises by virtue of an authentic act of sale, passed before S. Magner, N. P., on the 30th of October, 1865, by Henry F. Wade, Jr., and his wife, Margaret A. Wade, for the sum of $6,000; that said act contained all the warranties necessary to give a good and perfect title, and even the warranty of loyalty, that the said Mrs. Wade, after all the requisites of law were complied with, renounced any and all rights she had or might have on said property and ratified the sale, and dispossessed herself of all rights and liens which she has upon said property, whether by marriage contract, dower, donation or otherwise; and she further bound herself and her heirs and assigns that she and they shall and will, at all times, acknowledge the validity of the sale and of the renunciation she now makes, and neither she nor they shall seek to oppose or impair the force of this act, renouncing the benefit of all laws, privileges and customs of which she might avail herself. See Act, p. 25 of Record.

And plaintiff in error further says: that by virtue of said sale, with all the clauses therein contained, he took possession and has had peaceable possession of the same, and relying upon the validity of said sale, he commenced immediately to make extensive repairs upon the building, which was on the premises at the date of the sale, and also upon the lot, such as paving the yard with granite blocks, with the erection of an iron railing, that he also erected on said premises, separate and apart from the building, a large two-story brick carriage house and stable, and made a paved roadway from said brick building to the street, at the cost and expense of upwards $7000; that said brick carriage house and stable are now on the premises and can be removed without injury to the building then and now on the premises; that for the repairs on the buildings he expended the sum of $2000. He admits that Henry F. Wade, Jr., died February 24th, 1874, and that his succession was opened—that Mrs. Margaret A. Wade, widow, was appointed and qualified as natural tutrix to the minors; that an inventory was taken; that the property now claimed was not inventoried, and avers

that said property was not claimed as the property of said minors and that it was only in March last, 1878, that suit was brought to recover the premises, and he believes that the suit is a speculative one without either law or equity in its favor. He further avers that since the death of Wade he has paid $852 taxes and $267 77 insurance.

Plaintiff in error, then avers, that by the laws of this State, in the event of judgment in favor of defendant in error, as to the recovery of the premises in question, he is entitled to a judgment in his favor, for the value of the improvements, for the cost of repairs, for the taxes and insurance and for the return of the price paid. Record, pages 10.11

The case, by written consent, was tried before the Court. Record, page 13

FACTS—FINDINGS OF THE COURT.

The Court finds the following facts: 31.32

That Phillip D. Wade, Henry F. Wade, Hampton Wade and Ida A. Wade are the legitimate children of Henry F. Wade, Jr., deceased, and his sole and only heirs at law, and that Margaret A. Wade, their mother, is their duly qualified and appointed tutrix; that on the 20th January, 1865, the said Henry F. Wade, Jr., decedent, was seized and possessed, in fee, of a certain piece of ground with all the buildings and improvements thereon, and all the rights, ways, privileges, advantages and appurtenances thereunto belonging, or in any wise appertaining, situate, etc., acquired by said Henry F. Wade, from his father, Henry Farlow Wade, by act of donation, passed before Theodore Guyol, N. P., May 17, 1860; that on the 20th of January, 1865, in virtue of an act of Congress approved on the 17th of July, 1862, entitled, "An act to suppress insurrection, to punish treason and rebellion, to sieze and confiscate the property of rebels," and in virtue of the joint resolution of Congress, approved on the 17th of June, 1862, said property was siezed by the marshal of the United States for the District of Louisiana in the suit No. 7969, entitled, the United States vs. one piece of ground, the property of Henry F. Wade, Jr., in which said property was

libelled as forfeited to the United States for the causes therein mentioned (which libel is made part hereof and transcribed on pages 15 of this transcript), and that further proceedings were had in said suit on the 6th day of May, 1865, and the suit before described property was, by decree of said Court, condemned as forfeited to the U. S; that on the 21st of October, 1865, said property was sold under and by virtue of said decree of condemnation, and was purchased by the deceased, Henry F. Wade, Jr., who on the 30th October, 1865, by act before J. F. Coffey, N. P., sold the same to the defendant, J. M. French; that Henry F. Wade, Jr., the defendant in the confiscation proceedings, died 24th February, 1874; and as a conclusion of law from these facts, and considering the Act of Congress and the Joint Resolution aforesaid, and the decisions of the Supreme Court in Bigelow vs. French; 1 Wall. 103; Wallach vs. Riswick, 2 Otto, 202 and Pike vs. Wassell, 4th Otto, 711, it is considered that there be judgment decreeing the minors to be the true and lawful owners of the property described in the petition herein. Pages 31 of Record.

A motion for a new trial was then made, on the ground that the Court erred in deciding that the plaintiff, as tutrix (defendant in error) should recover and be put in possession of the property involved, on the authorities cited in the decree, as those authorities are not applicable to this case, as Wade himself was the purchaser; that the Court erred in decreeing possession, as Wade and his wife, with a full and perfect title, with all warranties of a good, perfect and just title, sold for full consideration the said property to defendant (plaintiff in error); that by law and in equity Wade and his wife were bound by their warranties, and if recovery is had this obligation of warranty descends to their heirs, and that said heirs are in law and equity obliged to return the purchase price before possession can be decreed and that in this respect the judgment is erroneous; that the defendant (plaintiff in error) being in good faith is entitled in law and equity to recover the costs of improvements and that the judgment in this respect is erroneous. Pages 33 of Record.

The peremptory exception, founded in law, of amnesty and

pardon extended and granted to Henry F. Wade, Jr., as appears from public proclamations of the President of the United States, of the dates of the 29th May, 1865, of the 7th September, 1867, and of the 25th December, 1868, was filed as a complete defense and bar to present action, and prays for judgment in his behalf. Page 33 of Record.

The rule of a new trial and the peremptory exception of pardon and amnesty were taken up by the Court and argued by the counsel engaged.

FURTHER FINDINGS BY THE COURT.

June 9th, 1879.—And upon motion of a new trial, upon the grounds set forth in the motion, the defendant (plaintiff in error) filed a peremptory exception, founded in law, to-wit: the plea of pardon and amnesty; to-wit: the proclamations of the President of the United States, granting pardon and amnesty, of the dates of May 29th, 1865, 7th September, 1867 and 25th December, 1868, and the oath of said defendant (in confiscation proceedings) filed with the Clerk of the Court of the date of June 19, 1865, and the Court, with the consent of counsel, considered the motion for a new trial granted, and the plea of pardon and amnesty was argued and discussed upon the merits, and the Court considering that said Wade was embraced in one of the exceptions of the proclamation of 29th May, 1865, and considering that the property was forfeited and condemnation was rendered before the date of the proclamations of September 7th, 1867, and December 25th, 1868, rendered a judgment for plaintiff (defendant in error). Pages 34 of Record.

BILL OF EXCEPTIONS—(Pages 34, 35—

Be it remembered that on the trial of the above cause, defendant (plaintiff in error) excepted to the rulings of the Court, *First*—on the ground that the plea of pardon and amnesty did restore to said Henry F. Wade, Jr., all his rights, title, interest and control in and to the property confiscated; that as said Wade did not depart this life until the 24th of February, 1874, he had the fee, the full and complete ownership of the real estate involved, by virtue of the proclamations, of September 7, 1867 and December 25th, 1868. That his warranty deed to said

French, of October, 1865, transferred to said French said property as fully and completely as if said property had not been confiscated and sold; and, *second*, said Wade, Jr., being the purchaser at the sale of the marshal of said property so condemned, purchased in his own life estate, and that by said purchase the life estate was not severed from the fee, and that he was, in all respects in law, as if said property had not been confiscated and sold; and *Third*, Because the judgment putting said plaintiff (defendant in error) in possession, is erroneous, before the questions of the return of the purchase price, improvements and questions of good and bad faith were acted upon and decided. But the Court over ruled the grounds thus taken by defendant's counsel and gave judgment for plaintiff (defendant in error) to which ruling and judgment the defendant (plaintiff in error) excepted, and tenders this his bill of exceptions, which is allowed accordingly. Page 34. 35 , record.

ASSIGNMENTS OF ERRORS.

First Error.—The Court erred in deciding that the defendant in error should recover and be put in possession on the authority cited, as those authorities are not applicable to this case, as Wade himself was the purchaser.

Second Error.—The Court erred in decreeing possession, as Wade and wife, with a full and perfect title, with all warranties, sold for full consideration and delivered the property to plaintiff in error; that these warranties descend to his heirs, and that said heirs must return the price paid before possession can be decreed.

Third Error.—The Court erred in decreeing possession before ascertaining the value of improvements and costs of repairs to be paid to plaintiff in error, as said plaintiff in error was in good faith.

Fourth Error.—The Court erred in deciding that the plea of pardon and amnesty did not reinstate Wade in all his rights and put him in the same condition and with the same rights he had before the judgment of condemnation and the sale by the marshal.

Argument.—The pleadings, findings of the Court and bill of

exceptions present the facts, and only questions of law are to be considered.

Wade's property, under the act of Congress and joint resolution, was condemned and sold. At the marsha became the purchaser for $2,050. (See marshal's sale, A few days after he sold to plaintiff in error for $6,00 a title with all warranties. (See sale to French, page 2 wife was a party to the sale, and also gave, not only the usual relinquishments required by the laws of Louisiana, but additional warranties. (See sale, page 28 Under this title French took possession and made extensive repairs and added a large two-story brick stable and carriage house at a cost of over $10,000. Wade died in February, 1874, and in March, 1878, the widow, in behalf of the minors, instituted this suit.

Wade bought that which was sold, to-wit: his life estate. He paid for it, and the Government received the proceeds. In all the cases referred to in the finding of the Court—1 Wall., 103; 2 Otto, 202; 4 Otto, 711—the life estate was purchased by third persons. The owners, in those cases, were divested of possession and control. Their interest during their lives was gone. They could not sell, for delivery is one of the essentials of a sale, and they could not deliver, because they had not the possession and control. But in the present case now before the Court, the condemnation and sale did not divest Wade of the ownership, possession or control. He bought in his own life estate and interest; he remained in possession, and was never divested of the control. He could sell, and being in possession, could make delivery. No one could interfere; no one had an adverse interest, and no third party could complain.

The fee was not confiscated. It could not be sold nor condemned, for the joint resolution of Congress forbids it; for it says: "Nor shall any punishment or proceedings be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

This Joint Resolution conforms to sec. 3, of art. 3 of the Constitution of the United States, which declares "no attainder of treason shall work corruption of blood or forfeiture except du-

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exceptions present the facts, and only questions of law are to be considered.

Wade's property, under the act of Congress and joint resolution, was condemned and sold. At the marshal's sale he became the purchaser for $2,050. (See marshal's sale, page 22) A few days after he sold to plaintiff in error for $6,000, giving a title with all warranties. (See sale to French, page 28) His wife was a party to the sale, and also gave, not only the usual relinquishments required by the laws of Louisiana, but additional warranties. (See sale, page 28) Under this title French took possession and made extensive repairs and added a large two-story brick stable and carriage house at a cost of over $10,000. Wade died in February, 1874, and in March, 1878, the widow, in behalf of the minors, instituted this suit.

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The fee was not confiscated. It could not be sold nor condemned, for the joint resolution of Congress forbids it; for it says: "Nor shall any punishment or proceedings be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

This Joint Resolution conforms to sec. 3, of art. 3 of the Constitution of the United States, which declares "no attainder of treason shall work corruption of blood or forfeiture except du-

ring the life of the person attainted," and certainly a pardon for treason would release the traitor from the penalties of the crime and restore him to all his rights.

The fee was not and could not be sold; it remained in Wade. It was not libelled nor condemned; it was not bought in by Wade, nor by the government. The United States could not buy; it could not interfere with the fee after the death of Wade; it had no control over it. The fee remained in Wade, and his heirs claim from him by virtue of the act of donation to Wade from his parents. Without that act the minors would have no standing in Court. The heirs are privies, not third persons; they inherit from their father and claim under his title.

Ownership is the right by which a thing belongs to some one in particular, to the exclusion of all other persons, and absolute ownership gives the right to enjoy and to dispose of one's property in the most unlimited manner. When Wade bought in his own life estate and when that life estate was conveyed to him by the government, the absolute ownership was restored to him. The fee and possession became united. It was admitted in argument, by the Court, that, if the fee had been confiscated and sold, Wade had the right to buy, the same right as any third person, and if he had the right to buy, he had the right to sell. In the cases quoted by the Court the right to use and enjoy, had, by the sale, been taken from the offender and transferred to third persons, who, during the life of the offender, had only the right to use, enjoy and receive the rents and revenues. This right acquired by third persons could not be interfered with; they were fully protected. But in the present case there are no third persons. Wade purchases his life estate, pays the price, and his perfect ownership was restored. He had the right to use and enjoy and receive the revenues of the property confiscated just the same as if the life estate had not been sold. He was divested of nothing which he purchased but the price which the Government received. Himself, wife and children remained in the possession and enjoyment of the property. The pretence that the minors derive their title from the Government is a fallacy, for the Government could not convey property which it did not own and which it could not buy, and

as no third party could purchase the fee, it must be clear that the fee remained in Wade, and as he was not dispossessed of the possession he had the right to sell, or otherwise dispose of it. Wade, as he could sell to advantage, sold to French, and received the proceeds which he used for the benefit of himself and family. It was the same to him and his family as if it had not been confiscated.

Suppose that Wade, during his life, had been advised that he had no right to sell, and, further, that he had been advised to bring suit either to recover the property or to annul the sale, in what position, before any court, would he appear? The defendant, of course, would set up his title from Wade and wife, and would ask judgment either for the confirmation of the sale, or for the return of the price paid and the value of improvements. Is it to be supposed that any Court would put him in possession without first returning the price paid, and costs of improvements and repairs? No Court would allow him to recover the property and keep the price. His heirs represent him and succeed to all his rights, and are bound by all his legal obligations, one of which is, in this case, the contract or obligation of warranty. If no Court, in Wade's lifetime, would restore to him the property without first returning the price, etc., his heirs are in no better position. Wade could not recover the property and keep the price. Equity would not sanction such an injustice. Story, Equity, Sec. 439. Courts of Equity never interpose at all where property has been conveyed by the voluntary and coveneous grant to a *bona fide* purchaser for valuable consideration, without notice. Such person is a favorite in the eyes of a Court of Equity and is always protected.

Again—Sec. 799 A. He who seeks equity shall do equity. Thus, for example, if a plaintiff seeks the aid of the Court to enforce his title against an innocent person, who has made improvements on land, supposing himself to be the absolute owner, that aid will be given to him only upon terms, that he shall make due compensation to such innocent person to the extent of the benefits which will be received from these improvements. In such a case, if the plaintiff has fraudulently concealed his

title and has thereby misled the defendant, the title to this compensation is founded in the highest justice. See sections 385, 388, 390—also see 799 b. and note 3, and opinion of Story in Bright vs. Boyd; 1 Story, R. 478, 494.

The seller, who does not defend the buyer, or who fails in the defense, in case of eviction should be condemned in case of eviction. 1st—to a restitution of the price; 2d—to acquit the buyer from judgment in favor of the original demander; 3d—to acquit the buyer from the expenses; 4th—to pay the buyer his damages, resulting from the eviction over and above the price. Pothier on sale; Cushing's Edition, page 70, sec. 118.

The obligation of warranty, which the seller contracts in favor of the buyer, gives the buyer against the seller and his heirs who succeed to his obligation, not only an action, but also an exception. This exception arises, when he, who sells me a thing which does not belong to him, and who afterwards becomes the owner of it by a right of succession or otherwise, brings a demand in revendication against me for the same thing. His demand proceeds against me, since he is the owner and not I, for, he cannot by the delivery, transfer to me an ownership which is not then his.

But as, by selling me the thing, he contracts, in my favor, an obligation to warrant it to me; that is to say, to cause me to have it and defend me against all troubles in my possession of it, there results from this obligation an exception which excludes his demand; for his obligation to cause me to have the thing sold, is manifestly opposed to the demand which he brings against me for it; his obligation to put an end to all troubles brought against me in relation to the thing, obliges him to put a stop to that which he himself causes by his demand; and, since he would be subject to the action of warranty, if another person should make a demand against me, he ought not himself to be allowed to bring any demand against me. Pothier on Sale, same edition, page 102, chapter 166.

This exception of warranty is equally good against the heirs of the seller, though they are the proprietors in their own right, for they succeed to this obligation as to all other rights and obligations of the deceased. Pothier, page 103.

The Civil Code of Louisiana incorporates all these principles of the Civil law. Thus, Art. C. C., 2475 says, " the seller is bound to two principal obligations, that of delivering and that of warranting the thing which he sells. C. C., 2482, 2506, " When there is a promise of warranty, or when no stipulation was made on that subject, if the buyer be evicted, he has the right to claim against the seller; 1st, The restoration of the price. 2d, That of the fruits or revenues, when he is obliged to return them to the owner who evicts them. 3d, All costs occasioned either by the suit in warranty on the part of the buyer, or by that brought by the original plaintiff. 4th, In fine, the damages when he has suffered any besides the price he paid. C. C., 2485, 2509. The seller is bound to reimburse or cause to be reimbursed to the buyer, by the person who evicts him, all useful improvements made by him on the premises, and C. C., 2486, 2510, if the seller knowingly and dishonestly has sold the property of another person, he shall be obliged to reimburse to the buyer all expenses, even those of embellishments of luxury that the buyer has been at in improving the premises.

IMPROVEMENTS AND GOOD FAITH.

In relation to improvements, persons in good faith are entitled to be paid for all up to date of judgment—in relation to fruits, they are only entitled to them up to the institution of suit. C. C., 503, 3416, 3453.

A possessor in good faith, that is under a just title, does not owe the fruits till after judicial demand; a just title is that which is of a nature to transfer the property, so that if it is not transferable it is owing to a want of title in the granter. 11 Martin, 675, Dufour vs. Camfrance. Possessors in good faith have the right of claiming improvements made by them on the disputed premises, and the right should not be transferable by an injunction against them not to remove from the land, fences and other improvements they may have placed on it. 3 La., 43, Palfrey vs. Martin.

The right of a party evicted to be paid for improvements by which the value of the land is enhanced, rests on that broad principle of equity, that no man ought to enrich himself at the expense of another, 16 La., 414, Pearce vs. Frantum. . The

title and has thereby misled the defendant, the title to this compensation is founded in the highest justice. See sections 385, 388, 390—also see 799 b. and note 3, and opinion of Story in Bright vs. Boyd; 1 Story, R. 478, 494.

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right to be paid for useful improvements is a real right, and the party evicted may retain possession until he be reimbursed, 12 Rob., 254, Williams vs. Booker. The possessor in good faith is one who has just reason to believe himself the master of the thing which he possesses under a title valid in point of form, Civil Code 3451, 3452, though he may not be so in fact; the possessor in bad faith is one who knows that he has no title, or that his title is defective, 6 Rob., 192, Lowry vs. Erwin.

A person in good faith, in case of eviction, is entitled to be paid for necessary improvements made even after judicial demand and judgment of eviction, such as clearings, levees and ditches, without which the land could not have been cultivated so as to yield the rents and profits claimed by the plaintiff. 2 A., 347, Beard vs. Maney.

WARRANTY AND RETURN OF THE PRICE.

Though, as a general rule, the right of the person evicting must have existed before the sale, the vendor always warrants against his own acts, and even when there is an exclusion of warranty, is liable for a restitution of the price.

6 La., 550, Canal Bank vs. Copeland.
4 A., 321, Crane vs. Lewis.
5 A., 667, Bowles vs. Alfred.
5 A., 683, Sewell vs. Roach.
3 A., 326, Hall vs. Neville.
5 A., 314, Scott vs. Featherston.
Civil Code, 2481, 2501, 2482.

A person in good faith is entitled to remuneration for useful improvements, and is not accountable for fruits. The owner has the choice either to reimburse the value of the materials and the price of workmanship, or to pay a sum equal to the enhanced value of the soil.

1 N. S., 408, Packwood vs. Richardson.
8 N. S., 609, Boatner vs. Ventress.
2 La., 174, Elliott vs. Labarre.
3 La., 543, Lowry vs. Erwin.
6 Rob., 192, Morris vs. Covington.
2 A., 259, Stambrough vs. Barnes, 2 A., 376.

Law and equity, certainly, are with the plaintiff in error. He purchased in good faith, paid full consideration, took possession, under a just title, which was delivered by Wade, and immediately repaired and erected a large two-story brick carriage house and stable. During Wade's life, a period of eight years and a half, he was undisturbed; Wade made no disposition of this property by will or otherwise; it was not claimed by the heirs until four years after his death. The heirs are in his place and have received the full benefit of the sale, and are bound by all the warranties of their parents. In case of eviction they must return the price received and all costs of improvements and repairs; they cannot keep all; they are in bad faith, for their vendor, Wade, was in bad faith in selling that which he did not own (for the position of defendant in error is that Wade could not sell) and they, the heirs, are in worse faith in repudiating the sale of their parents and in refusing to return the price paid and the costs of improvements and repairs.

AMNESTY AND PARDON.

No distinction has yet been made between pardon and amnesty, as none, perhaps, was necessary; in effect there is none; if there is any difference it is that pardon is given to a person by name and amnesty to a large class. Amnesty is the pure Greek word *amnestia*. "We learn from ancient history," says Hume, "that Thrasybulus passed a general amnesty for all past offences and first introduced that word and practice into Greece." The extent and effect of pardon have been frequently defined by this Court. Wade, by his counsel, in June, 1865, see record and findings, page 35 put in the plea of pardon and took the required oath; he was not embraced in the exceptions. But there was a clause in the first part of the proclamation of May, 1865, to-wit: the pendency of proceedings to confiscate commenced before the date of the proclamation. Why that should be an exception cannot be readily perceived. He was not within the enumerated exceptions. The government thought proper to restore him and all others in the same position, to all their rights. No third persons, at that date, in this case, had

acquired an interest in Wade's property, because it had not been sold. It is a rule of construction, in all printed and written documents, that particular specifications, restrict and limit the general specifications, and this upon the reasonable presumption, that the particular specifications were all that the parties making them intended should be embraced in the instrument. There were thirteen or more distinct exceptions in the proclamation of May, 1865, and Wade was not within any one of them. As will be shown in the cases to be quoted, the pardon restored the offender to all his rights, but did not disturb the rights acquired by third person.

The Court decides in 1 Otto, 474, Osborn vs. U. S., "Subject to exceptions therein prescribed, a pardon by the President restores to its recipient all rights of property lost by the offence pardoned, unless the property has by judicial process become *vested in other persons.* In this case it had not become vested in other persons, for the property was not sold until the 21st of October, 1865, nearly five months after the date of the proclamation, and then when sold it did not go to other, or third persons. In this same case, 1 Otto, 477, Mr. Justice Field uses this language: "It is of the very essence of a pardon that it releases the offender from the consequences of his offence. If in the proceedings to establish his culpability, and enforce the penalty, and before the grant of pardon, the rights of others, than the government, have vested, those rights cannot be impaired by the pardon. But unless rights of others in the property condemned have accrued, the penalty of forfeiture annexed to the commission of the offence, must fall with the pardon itself."

At the date of this proclamation of May, 1865, no one was interested in Wade's property, by the seizure, except the government, and certainly the government did not intend to confiscate and sell Wade's property, for its own benefit, after the pardon granted him. The offence fell with the pardon in the language of the Court. French sets up this pardon and urges that the pardon had the effect to release the seizure and condemnation of Wade's property. He was pardoned of the offence against the government which the judgment of con-

demnation convicted him. The blot was erased. The government, after this act of grace, could not insist upon the exaction of the penalty. The offence was pardoned and as the crime was erased, the penalty was also erased. It is passing strange that the government would pardon and afterwards insist upon the payment of the penalty. There was no one interested in the property, except the United States, and surely the government intended to release its interest in it by the pardon.

A pardon, after conviction of treason and before the penalty had been enforced, would carry with it the release of the penalty. Assuming this position to be correct, then as the condemnation was made in May, 1865, a few days before the pardon, and as the sale did not take place until October, 1865, Wade had the right to sell, as his offence had been pardoned and the penalty in consequence of the pardon, had been remitted.

Subsequent proclamations of pardon and amnesty were pleaded and particularly that of December 25, 1868. The concluding part is as follows: "I proclaim and declare unconditionally and without reservation to all and every person who directly or indirectly participated in the late insurrection or rebellion a full pardon and amnesty for the offence of treason against the United States, or adhering to their enemies during the late civil war, with the restoration of all rights, privileges and immunities under the Constitution and laws which have been made in pursuance thereof. 15 Stat., 711.

In 5th Otto 149, Knote vs. U. S. this particular proclamation of pardon and amnesty of Oct., 1868, is published at length and a reference to the opinion of the Court will suffice. Apply the views of the Court, as expressed to this case. Wade's property was condemned before the proclamation of 1865; it was sold afterwards, to-wit: in October, 1865, and he purchased it. The effect of this purchase of his own life estate has been discussed in a previous part of this argument. He sold in October, 1865; he had the right to sell, as urged in previous remarks. Suppose he had not the right at that time to sell, then the question for consideration is, had he not the right to sell after the date of

the proclamation of 1868? The pardon reinstates him in all his rights; his life estate had been purchased in by himself, and by that purchase the fee was not severed from the possession, for the possession was in him by purchase. The fee could not be sold as proved in the previous part of this brief. But if the fee was held in abeyance, during the life of the offender, then it is plain that the pardon in this case restored the fee to the offender, for the government wiped out the offence and all penalties attached to it, and restored the offender to all his rights, and in this case his right to the fee. But as he sold before this pardon was extended to him, the Court held, it did not apply. Wade could have sold in December, 1868, for no third person could be injured. It is unnecessary to demonstrate now, familiar principles of law and equity, to this Honorable Court.

When one sells a thing which he does not own, or when the title may be defective and he afterwards perfects his title, either by purchase, by inheritance, or by any other mode, this title, thus perfected, enures to the benefit of the vendee. It is waste of time to quote authorities to this point. In the extracts from Pothier already made, this position is made clear. To apply this well settled principle to this case: If Wade could not make a valid sale of the fee in 1865, the pardon of 1868 gave him that right and retroacted and perfected the sale of 1865—it enured to the benefit of French. If Wade, if alive, should now bring suit to set aside his sale of 1865, on the allegation that he had no right to sell, the answer would be—true you did sell, perhaps had no right to sell—true, you received full value, but now, since you have been restored to all your rights, by pardon, that pardon perfects and ratifies your sale. To hold differently, would be to permit Wade, (and his heirs are in his place) to take an iniquitous advantage of the grace and pardon of government.

In the case of the U. S. vs. Paddleford, 9 Wall., 531 and of the U. S. vs. Klein, 13 Wall., 128, the effect of pardon, upon claimants for the restoration of the proceeds of captured and abandoned property, was fully considered. The proclamation of December, 1863, granted a full pardon except as to slaves

and in property cases where the rights of third persons shall have intervened. In 1870 Congress passed an act to qualify the extent of pardon, by declaring that the pardon itself was proof of disloyalty and that loyalty must, in all cases be proved, and yet the Supreme Court in the case of Klien, gave him a standing in Court, without proof of loyalty. The proclamations of May, 1865, of September, 1867, of July, 1868 and 25th December, 1868, on page 141 of 13th Wall., are all considered. These cases support the views expressed and sustain the argument made.

In France this case arose: Girardin was, in 1834, condemned by default and sentenced to death for some political offence. In 1840 amnesty for political offences was declared. Supposing that civil death had dissolved his marriage, celebrated in 1822, he applied to be remarried; the mayor refused; the Court ~~reversed~~ affirmed his decision upon the ground that "the amnesty had annihilated the sentence pronounced against Girardin, had abolished the past, and had reintegrated the amnestied in the plenitude of his civil life—that, consequently, he is to be regarded as never having been deprived of civil life; and that the new celebration would be in some sort an act of derision and contrary in every respect to the sanctity of marriage. DeVill & Carr, 1840, part 2, page 372. Girardin was not yet satisfied and he took his case to the Court of Cassation, and this, the highest tribunal in France, say: "Since the object of amnesty is to efface, completely, the past—that is to say, to replace the amnestied in the position in which they were before condemnation had been incurred, it follows that it produces complete re-establishment of the amnestied in the enjoyment of the rights which they had before the condemnation, saving the rights of third persons." The judgment of the Court below was affirmed. DeVill and Carr, 1850, part 1, page 672.

If now in this case, after the civil death of Girardin and before his pardon, his wife had married, then the right of the new husband, the third person, would have been protected. Now, the pardon of December, 1868, did restore Wade to all his civil rights. No third person had any right to the fee. He had as clear a right to sell as the most loyal citizen—he was,

as the Court of Cassation declared, "in the position in which he was before condemnation had been incurred."

The equity of this case is with the plaintiff in error, Wade sells, gives a complete title, with all warranties, receives a full consideration, delivers possession, permits the purchaser, French, to improve and repair at great cost, and his heirs, who succeed to all his rights and obligations, thirteen years after the sale and delivery bring suit to recover the property, without an offer to return the price paid, or the costs of improvements. Receiving all the benefit of the price, they now ask for the property as it is. As set forth in the answer, this is a speculative suit without law or equity for its support.

The case is submitted with great confidence that the errors assigned are fully demonstrated and plaintiff in error asks that the decree of the Court may be reversed and case remanded, with costs.

Respectfully submitted,

P. F. Jones

for Plff in error

Supreme Court of the U. S.

No 1029

JOSEPH M. FRENCH, PLFF. IN ERROR.

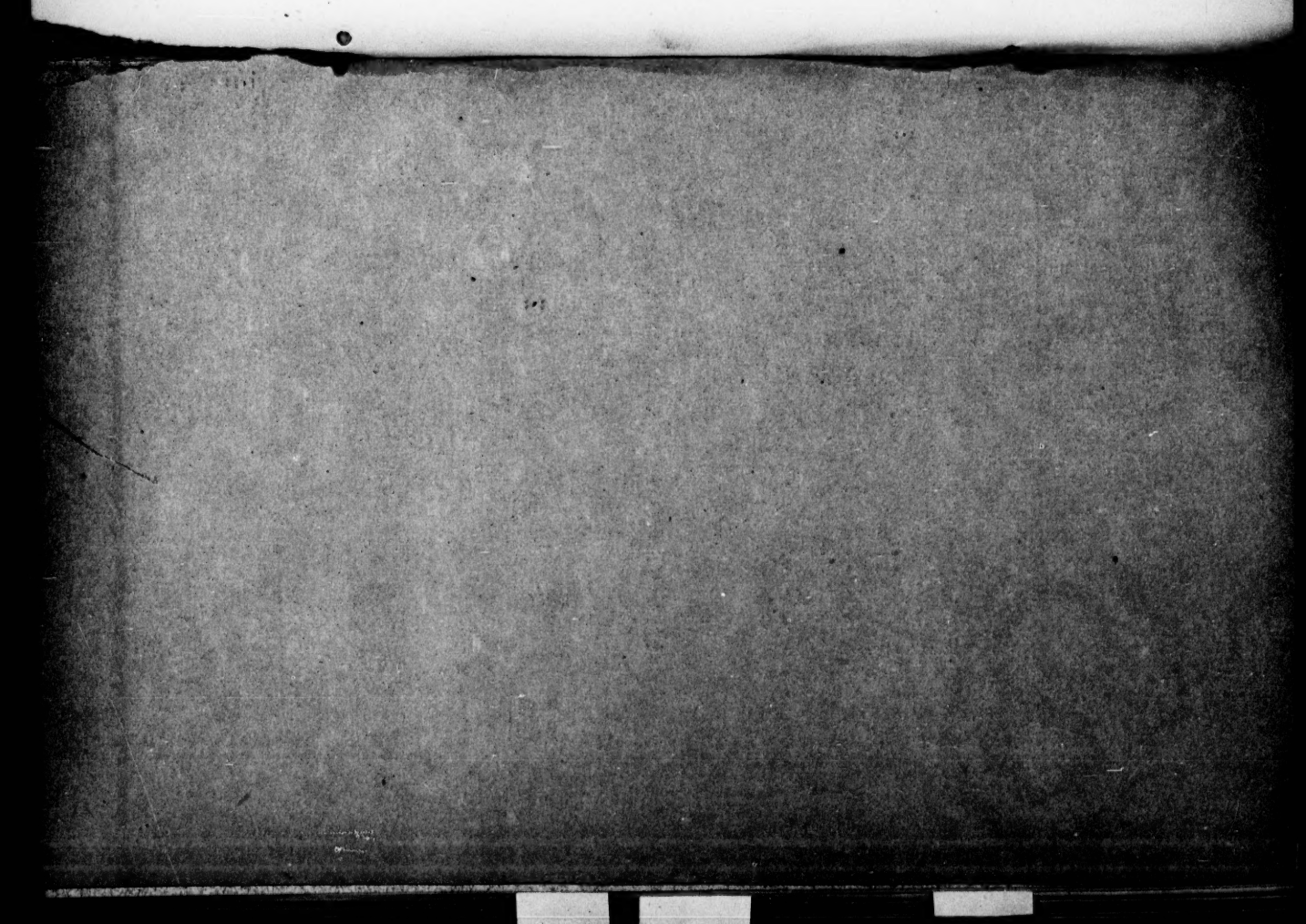
vs.

MARGARET WADE, *Tutrix*, DEFT. IN ERROR.

From the Circuit Court of the United States in Louisiana.

J. A. CAMPBELL,
For the Deft. in Error.

Murphy & Co., Printers, Publishers, Booksellers & Stationers, Balt.



Supreme Court of the United States.

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vs.

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From the Circuit Court of the United States in Louisiana.

MATTERS OF FACT.

Henry F. Wade was the owner of the lots of ground in New Orleans which are the subject of this controversy, in January, 1865. Proceedings for the confiscation of this property were commenced in the District Court of the United States at New Orleans, in January, 1865, and a decree was rendered in May, 1865, and on the 21st of October, 1865, they were sold and Henry F. Wade, the *rebel owner*, became the purchaser at the sale of his own property. (Record, pp. 22, 23.) The record shows he had before the sale been rehabilitated into loyal citizenship partially under an amnesty proclamation of May 29th, 1865; but notwithstanding, the sale proceeded and he purchased the property at the sale and went into possession under the deed.

On the 30th October, 1865, Wade the purchaser sold this same property to the plaintiff in error, French, and his deed to French,

(Record, pp. 29, 30), shows that the sale of the property under the decree of the District Court, on the 21st of October, was referred to as the origin of his title. French occupied the property till the death of Wade and subsequently thereto; Wade died in 1874, and this suit is maintained by his heirs at law to recover from French.

The only difference between this case and others which have been decided in this Court under the Act of Congress, of the 17th July, 1862, known as the Act for confiscation of the property of rebels, is that in these other cases the purchase at the sale of the property under the confiscation decree was made by a stranger to the property, and the stranger subsequently bought the remainder after the expiration of the life estate from the defendant in the decree for an adequate consideration. The land of Wallach was sold to a loyal citizen by the marshal executing the decree, and to perfect the title the purchaser obtained a confirmation of the sale and a release of claim from Wallach. So in the case of Chaffraix vs. Shieff, from Louisiana, the purchaser at the sale acquired the title from the defendant Surgett, after the sale had been made.

2 Otto, 202, 215.

In this case the defendant acquired the right sold by the marshal under the decree, and in ten days after this sale, made another sale to French. He sold what had been acquired at the sale under the decree. (Record, p. 28.)

PLEADINGS AND EVIDENCE.

The suit was commenced in the Third District Court of the parish of Orleans by the tutrix of the children of Wade, the defendant in the decree of confiscation in their behalf. (Record, p. 1.) French being a citizen of another State, removed this suit to the Circuit Court of the United States. (Record, p. 8.)

In the Circuit Court the cause was tried without a jury by consent of parties. (Record, p. 13.)

The Judge of the Circuit Court made a decree in favor of the plaintiff, in which the facts are all stated as found by him, (Record, p. 31); and in which there is a reference to the cases decided in the Supreme Court upon the questions arising in this cause. The principal question is, did Wade convey to French any title to the property to operate after his death in 1874?

POINTS OF LAW.

The Judge of the Circuit Court determined, that the Act of confiscation followed by the seizure and sale of the property upon the suit of the United States, divested the entire right and interest of the defendant in the suit, in the property seized and sold. The purchaser acquired only a life estate at the sale, and if the defendant's title was a fee-simple, the remainder, after the expiration of the estate for life, vested in the heirs of the defendant. The Circuit Court decided that this remainder could not be conveyed by the defendant in his life so as to defeat the claim of the children.

It cannot be disputed that the authorities cited by the Circuit Judge sustain his conclusion.

The argument of the plaintiff is a mere contradiction of the conclusions of the Supreme Court in these cases.

II.

The claim for the improvements made by the tenant for life, was not decided in the Circuit Court. The claim is for taxes, insurance and improvements, or additions to the property. The taxes, insurance and other charges are imposed upon the usufructuary.

C. C., Art. 578.

Milton vs Benjamin 26 Ann 718-720
Pendyce vs Swarz 30 Ann 590 592

At the expiration of the usufruct, the usufructuary has no right to claim any compensation for the improvements which he contends he has made, although the value of the thing may have been increased by such improvements. He is bound to abandon without compensation, not only the buildings and other works he may have constructed on the property, whether they have or have not foundation in the soil; but all other moveable things which he may have attached to it permanently.

Rev. Code, Art. 594.

The Supreme Court of Louisiana denied the claim for improvements in a similar case

Brugere vs. Slidell's heirs, 27 Ann., 70. + cases above

Coleman vs. Poydras Asylum, 17 Ann., 325.

Pothier du Douaire, sec. 277, vol. V, p. 333.

III.

The decree vesting the property of Wade in the United States, and ordering its sale as forfeited, was made sixth of May, upon a seizure in January, 1865. The sale was made in October, 1865; there was no release of the right of the United States during this interval, but an application to the Court during this period failed. (Record, pp. 23, 27.)

The effect of pardon subsequently has not been determined to reïnstate the title in the property sold, or to that portion which was not sold viz: the remainder in fee.

The cases cited in the opinion of the Circuit Court, and others, seem to leave no question on this subject.

Chaffraix vs. Shiff, 2 Otto, 214.

Semmes vs. United States, 1 Otto, 21.

Respectfully submitted,

J. A. CAMPBELL,

For the Deft. in Error.